

6-4-2008

Christensen v. S.L. Start & Associates, Inc. Clerk's Record v. 1 Dckt. 35169

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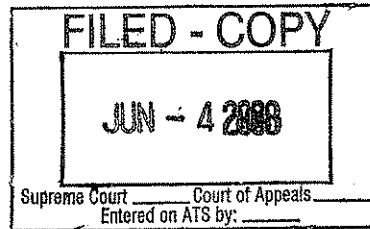
Vol. 1 of 3

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

BETTY S. CHRISTENSEN,)
)
 Claimant/Appellant,)
)
 v.)
)
 S.L. START & ASSOCIATES, INC.,)
 Employer, and STATE INSURANCE)
 FUND, Surety,)
)
 and)
)
 STATE OF IDAHO, INDUSTRIAL)
 SPECIAL INDEMNITY FUND,)
)
 Defendants/Respondents.)

SUPREME COURT NO. 35169

AGENCY'S RECORD



BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

Attorney for Appellant:

MICHAEL J VERBILLIS
 PO BOX 519
 COEUR D'ALENE ID 83816-0519

Attorney for Respondents
 Employer/Surety:

PAUL J AUGUSTINE
 PO BOX 1521
 BOISE ID 83701

Attorney for Respondent
 State of Idaho, Industrial Special
 Indemnity Fund:

THOMAS W CALLERY
 PO BOX 854
 LEWISTON ID 83501-0854

COPY

35169

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

BETTY S. CHRISTENSEN,)
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 Claimant/Appellant,)
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 SPECIAL INDEMNITY FUND,)
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 Defendants/Respondents.)
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SUPREME COURT NO. 35169
AGENCY'S RECORD

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

Attorney for Appellant:

MICHAEL J VERBILLIS
PO BOX 519
COEUR D'ALENE ID 83816-0519

Attorney for Respondents
Employer/Surety:

PAUL J AUGUSTINE
PO BOX 1521
BOISE ID 83701

Attorney for Respondent
State of Idaho, Industrial Special
Indemnity Fund:

THOMAS W CALLERY
PO BOX 854
LEWISTON ID 83501-0854

COPY

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LIST OF EXHIBITS

Reporter's Transcript, taken on November 29, 2006, will be lodged with the Supreme Court.

Claimant's Exhibits:

1. Michael J. Carraher (vol. 1 of 2), pp 1-105
2. Michael H. Kody (vol. 1 of 2), pp 1-10
3. John J. Demakas (vol. 1 of 2), pp 1-13
4. John L. Pennings (vol. 1 of 2), pp 1-9
5. James Lea (vol. 1 of 2), pp 1-5
6. Scott K. Magnuson (vol. 1 of 2), pp 1-13
7. James Dunlap (vol. 1 of 2), pp 1-53
8. Betty Christensen Resume w/ Attachments (vol. 2 of 2), pp 1-16
9. Functional Capacity Examination (vol. 2 of 2), pp 1-14
10. Vocational Rehabilitation Field Notes (vol. 2 of 2), pp 1-10
11. North Idaho Home Health (vol. 2 of 2), pp 1-44
12. Coeur d'Alene Physical Therapy (vol. 2 of 2), pp 1-18
13. Contingent Fee Agreement (vol. 2 of 2), pp 1-3
14. Accident Reports (vol. 2 of 2), pp 1-9
15. Correspondence re: Attorneys' Fees (vol. 2 of 2), pp 1-47
16. Demonstrative Exhibit {foot} (vol. 2 of 2), pp 1-2
17. Michael J. Carraher, M.D., Curriculum Vitae
18. Medicine Man Prairie Pharmacy Fax to Mike Verbillis

Defendants Employer/Surety's Exhibits:

- A. Medical Records of Thomas A. Neal, M.D.
- B. Medical Records of Michael Carraher, M.D.
- C. Medical Records of Michael H. Kody, M.D.
- D. Medical Records of Coeur d'Alene Physical Therapy & Sports Medicine
- E. Medical Records of C. William Britt, Jr., M.D.
- F. Medical Records of University of Washington Medical Center/Harborview Medical Center
- G. Medical Records of Medical Consultants Network
- H. Medical Records of Andrew Chiu, M.D.
- I. Medical Records of Scott Magnuson, M.D.
- J. Medical Records of Robert H. Friedman, M.D.
- K. IME of William R. Bozarth, M.D. and Warren J. Adams, M.D.
- L. Claimant's Employment Records of SL Start & Associates
- M. Lump Sum Agreement dated August 13, 1997
- N. Employment History and Hand-Written Notes
- O. Claimant's Deposition Transcript, dated July 23, 2003

- P. Douglas N. Crum, CDMS, Resume
- Q. Supplemental Records Regarding Claimant's Claim for Attorney Fees and Defendant Employer/Surety's Payment of Claimant's Medical Expenses

Defendant State of Idaho Industrial Special Indemnity Fund's Exhibits:

1. Deposition of Claimant, Betty S. Christensen, taken on November 15, 2005
2. 1999 Income Tax Return of Claimant
3. 2000 Income Tax Return of Claimant
4. 2001 Income Tax Return of Claimant
5. 2002 Income Tax Return of Claimant
6. Industrial Commission Rehabilitation Case Notes – Dirk Darrow
7. Panel Evaluation of William R. Bozarth, M.D., Neurologist and Warren J. Adams, M.D., Orthopedic Surgeon, dated April, 2006
8. Summit Rehabilitation Associates – Functional Capacity Evaluation
9. Sigvard Hansen, M.D. – Harborview Medical Center – August 27, 1996 letter and September 6, 1996 follow-up visit letter
10. Reports of Doctors Almaraz and Coletti
11. North Idaho MRI
12. Pain Management of North Idaho
13. John J. Demakas – Inland Neurosurgery and Spine
14. Michael J. Carraher, M.D.
15. James Lea, M.D.
16. James M. Dunlap, M.D.
17. Robert H. Freidman, M.D. – Idaho Physical Medicine and Rehabilitation
18. Coeur d'Alene Physical Therapy and Sports Medicine

Additional Documents:

1. Claimant's Post-Hearing Brief, filed April 11, 2007
2. Defendant Employer/Surety's Post-Hearing Brief, filed May 1, 2007
3. Defendant State of Idaho Industrial Special Indemnity Fund's Post-Hearing Brief, filed May 1, 2007
4. Claimant's Reply Brief, filed May 16, 2007
5. Deposition of Claimant Betty S. Christensen, taken July 23, 2003
6. Deposition of Mark Bengtson, MPT, taken January 3, 2007
7. Deposition of Tom L. Moreland, taken January 30, 2007

WORKERS COMPENSATION COMPLAINT

CLAIMANT'S NAME AND ADDRESS BETTY S. CHRISTENSEN c/o Michael Verbillis P.O. Box 519 Coeur d'Alene, ID 83816-0519		CLAIMANT'S ATTORNEY'S NAME AND ADDRESS Michael Verbillis P.O. Box 519 Coeur d'Alene, ID 83816-0519
EMPLOYER'S NAME AND ADDRESS S. L. Start & Associates, Inc. 1323 E Sherman, Suite 2 Coeur d'Alene, ID 83814		WORKER'S COMPENSATION INSURANCE CARRIER'S (NOT ADJUSTOR'S) NAME AND ADDRESS State Insurance Fund PO Box 83720 Boise, ID 83720
CLAIMANT'S SSN [REDACTED]	CLAIMANT'S BIRTHDATE 8/16/59	DATE OF INJURY OR MANIFESTATION OF OCCUPATIONAL DISEASE (1) & (2) (1) 12/5/02 & (2) 12/9/02
STATE AND COUNTY IN WHICH INJURY OCCURRED Kootenai County, State of Idaho		WHEN INJURED, CLAIMANT WAS EARNING AN AVERAGE WEEKLY WAGE OF: \$7.00 per hour

DESCRIBE HOW INJURY OR OCCUPATIONAL DISEASE OCCURRED (WHAT HAPPENED)
 (1) attempting to assist in lifting a patient from a confined space on a bus and (2) catching an obese patient, who had fainted while walking

NATURE OF MEDICAL PROBLEMS ALLEGED AS A RESULT OF ACCIDENT OR OCCUPATIONAL DISEASE Injury to shoulders, spine, lower back, right knee, right ankle and right foot, including rupture of extensor hallucis

WHAT WORKER'S COMPENSATION BENEFITS ARE YOU CLAIMING AT THIS TIME? Total Temporary Disability, Permanent Partial Impairment, Disability in Excess of Impairment, Medical Benefits, and Attorney's Fees for the denial of time loss and medical benefits.

DATE ON WHICH NOTICE OF INJURY WAS GIVEN TO EMPLOYER 12/6/02	TO WHOM DID YOU GIVE NOTICE supervisor
HOW WAS NOTICE GIVEN: <input type="checkbox"/> ORAL <input checked="" type="checkbox"/> WRITTEN <input type="checkbox"/> OTHER, PLEASE SPECIFY	

ISSUE OR ISSUES INVOLVED All issues

DO YOU BELIEVE THIS CLAIM PRESENTS A NEW QUESTION OF LAW OR A COMPLICATED SET OF FACTS? YES NO IF SO PLEASE STATE WHY.

NOTICE: COMPLAINTS AGAINST THE INDUSTRIAL SPECIAL INDEMNITY FUND MUST BE FILED ON FORM I.C. 1002

RECEIVED INDUSTRIAL COMMISSION
 APR 24 10:48 AM 2003

PHYSICIANS WHO TREATED CLAIMANT (NAME AND ADDRESS)

James Lea, M.D., 2022 Government Way,
Coeur d'Alene, ID 83814;
Michael J. Carraher, M.D., 1300 E.
Mullan, Suite 1600, Post Falls, ID 83854;
and

James Dunlap, M.D., 910 W 5th Avenue,
Suite 500, Spokane, WA 99204

WHAT MEDICAL COSTS HAVE YOU INCURRED TO DATE?

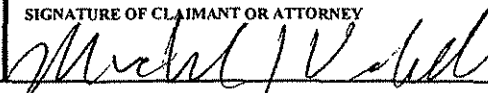
WHAT MEDICAL COSTS HAS YOUR EMPLOYER PAID, IF ANY \$ _____ WHAT MEDICAL COSTS HAVE YOU PAID \$ none

I AM INTERESTED IN MEDIATING THIS CLAIM, IF THE OTHER PARTIES AGREE YES NO

DATE

4-22-03

SIGNATURE OF CLAIMANT OR ATTORNEY



PLEASE ANSWER THE SET OF QUESTIONS IMMEDIATELY BELOW
ONLY IF CLAIM IS MADE FOR DEATH BENEFITS

NAME OF DECEASED	DATE OF DEATH	RELATION OF DECEASED TO CLAIMANT
WAS CLAIMANT DEPENDANT ON DECEASED YES ___ NO ___	DID CLAIMANT LIVE WITH DECEASED AT THE TIME OF THE ACCIDENT YES ___ NO ___	

CLAIMANT MUST COMPLETE, SIGN AND DATE THE FOLLOWING:

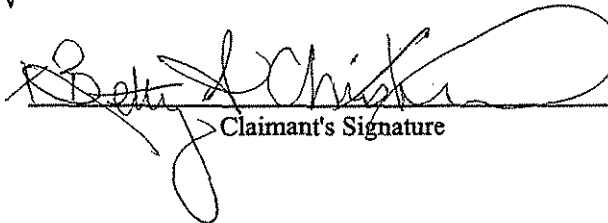
MEDICAL RELEASE FORM

I hereby authorize any defendant and defendant's legal counsel, at their sole expense, to examine, inspect, receive or take copies of any medical reports, records, x-rays or test results of hospitals, physicians or any other person, or to receive information from any person having examined me and their diagnosis, relative to my past, present and future physical and mental condition.

I also authorize and direct that a duplicate set of all documents or written records provided to said law firm, or any individual member thereof be also provided to my attorney MICHAEL J. VERBILLIS. The defendant requesting my records shall bear the expense incurred in production of such duplicate set.

I further authorize that copies of this authorization may be used in lieu of the original. THIS AUTHORIZATION IS VALID ONLY FOR THE DURATION OF THE PENDING LITIGATION. It is further understood that all information obtained under this authorization shall be regarded as confidential and maintained as such.

Dated this 22 day of April, 192003



Claimant's Signature

NOTICE! An Employer or Insurance Company served with a Complaint must file an Answer on Form I.C. 1003 with the Industrial Commission with 21 days of the date of service as specified on the certificate of mailing to avoid default. If no answer is filed, a Default Award may be entered!

Further information may be obtained from: Industrial Commission, Judicial Division, 317 Main Street, Boise, Idaho 83720-6000 (208)334-6000

CERTIFICATE OF SERVICE

I hereby certify that on the 22 day of April, 2003, that a true and correct copy of the foregoing was mailed by regular, postage pre-paid, addressed to:

S. L. Start & Associates, Inc.
1323 E Sherman, Suite 2
Coeur d'Alene, ID 83814

State Insurance Fund
PO Box 83720
Boise, ID 83720



MICHAEL J. VERBILLIS

WORKERS COMPENSATION COMPLAINT

CLAIMANT'S NAME AND ADDRESS BETTY S. CHRISTENSEN c/o Michael Verbillis P.O. Box 519 Coeur d'Alene, ID 83816-0519		CLAIMANT'S ATTORNEY'S NAME AND ADDRESS Michael Verbillis P.O. Box 519 Coeur d'Alene, ID 83816-0519
EMPLOYER'S NAME AND ADDRESS S. L. Start & Associates, Inc. 1323 E Sherman, Suite 2 Coeur d'Alene, ID 83814		WORKER'S COMPENSATION INSURANCE CARRIER'S (NOT ADJUSTOR'S) NAME AND ADDRESS State Insurance Fund PO Box 83720 Boise, ID 83720
CLAIMANT'S SSN [REDACTED]	THDATE [REDACTED]	DATE OF INJURY OR MANIFESTATION OF OCCUPATIONAL DISEASE (1) 12/5/02 & (2) 12/9/02
STATE AND COUNTY IN WHICH INJURY OCCURRED Kootenai County, State of Idaho		WHEN INJURED, CLAIMANT WAS EARNING AN AVERAGE WEEKLY WAGE OF: \$7.00 per hour

DESCRIBE HOW INJURY OR OCCUPATIONAL DISEASE OCCURRED (WHAT HAPPENED)
(1) attempting to assist in lifting a patient from a confined space on a bus and (2) catching an obese patient, who had fainted while walking

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WHAT WORKER'S COMPENSATION BENEFITS ARE YOU CLAIMING AT THIS TIME? Total Temporary Disability, Permanent Partial Impairment, Disability in Excess of Impairment, Medical Benefits, and Attorney's Fees for the denial of time loss and medical benefits.

RECEIVED
 INDUSTRIAL COMMISSION
 2003 APR 24 11 A 8:48

DATE ON WHICH NOTICE OF INJURY WAS GIVEN TO EMPLOYER 12/6/02	TO WHOM DID YOU GIVE NOTICE supervisor
HOW WAS NOTICE GIVEN: <input type="checkbox"/> ORAL <input checked="" type="checkbox"/> WRITTEN <input type="checkbox"/> OTHER, PLEASE SPECIFY	

ISSUE OR ISSUES INVOLVED All issues

DO YOU BELIEVE THIS CLAIM PRESENTS A NEW QUESTION OF LAW OR A COMPLICATED SET OF FACTS? YES NO IF SO PLEASE STATE WHY.

NOTICE: COMPLAINTS AGAINST THE INDUSTRIAL SPECIAL INDEMNITY FUND MUST BE FILED ON FORM I.C. 1002

PHYSICIANS WHO TREATED CLAIMANT (NAME AND ADDRESS)

James Lea, M.D., 2022 Government Way,
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Michael J. Carraher, M.D., 1300 E.
Mullan, Suite 1600, Post Falls, ID 83854;
and

James Dunlap, M.D., 910 W 5th Avenue,
Suite 500, Spokane, WA 99204

WHAT MEDICAL COSTS HAVE YOU INCURRED TO DATE?

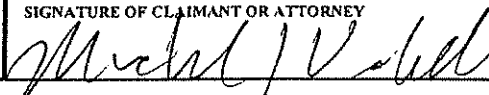
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I AM INTERESTED IN MEDIATING THIS CLAIM, IF THE OTHER PARTIES AGREE YES NO

DATE

4-22-03

SIGNATURE OF CLAIMANT OR ATTORNEY



PLEASE ANSWER THE SET OF QUESTIONS IMMEDIATELY BELOW
ONLY IF CLAIM IS MADE FOR DEATH BENEFITS

NAME OF DECEASED		DATE OF DEATH	RELATION OF DECEASED TO CLAIMANT
WAS CLAIMANT DEPENDANT ON DECEASED <input type="checkbox"/> YES <input type="checkbox"/> NO		DID CLAIMANT LIVE WITH DECEASED AT THE TIME OF THE ACCIDENT <input type="checkbox"/> YES <input type="checkbox"/> NO	

CLAIMANT MUST COMPLETE, SIGN AND DATE THE FOLLOWING:

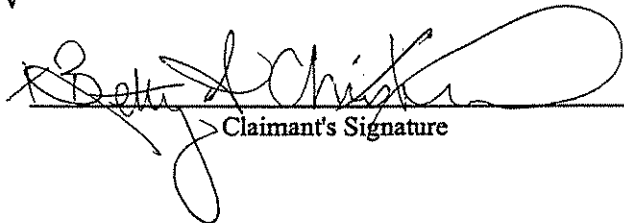
MEDICAL RELEASE FORM

I hereby authorize any defendant and defendant's legal counsel, at their sole expense, to examine, inspect, receive or take copies of any medical reports, records, x-rays or test results of hospitals, physicians or any other person, or to receive information from any person having examined me and their diagnosis, relative to my past, present and future physical and mental condition.

I also authorize and direct that a duplicate set of all documents or written records provided to said law firm, or any individual member thereof be also provided to my attorney MICHAEL J. VERBILLIS. The defendant requesting my records shall bear the expense incurred in production of such duplicate set.

I further authorize that copies of this authorization may be used in lieu of the original. THIS AUTHORIZATION IS VALID ONLY FOR THE DURATION OF THE PENDING LITIGATION. It is further understood that all information obtained under this authorization shall be regarded as confidential and maintained as such.

Dated this 22 day of April, 192003



Claimant's Signature

NOTICE! An Employer or Insurance Company served with a Complaint must file an Answer on Form I.C. 1003 with the Industrial Commission with 21 days of the date of service as specified on the certificate of mailing to avoid default. If no answer is filed, a Default Award may be entered!

Further information may be obtained from: Industrial Commission, Judicial Division, 317 Main Street, Boise, Idaho 83720-6000 (208)334-6000

CERTIFICATE OF SERVICE

I hereby certify that on the 22 day of April, 2003, that a true and correct copy of the foregoing was mailed by regular, postage pre-paid, addressed to:

S. L. Start & Associates, Inc.
1323 E Sherman, Suite 2
Coeur d'Alene, ID 83814

State Insurance Fund
PO Box 83720
Boise, ID 83720



MICHAEL J. VERBILLIS

AMENDED WORKERS COMPENSATION COMPLAINT IC 02-525919

CLAIMANT'S NAME AND ADDRESS BETTY S. CHRISTENSEN c/o Michael Verbillis P.O. Box 519 Coeur d'Alene, ID 83816-0519		CLAIMANT'S ATTORNEY'S NAME AND ADDRESS Michael Verbillis P.O. Box 519 Coeur d'Alene, ID 83816-0519
EMPLOYER'S NAME AND ADDRESS S. L. Start & Associates, Inc. 1323 E Sherman, Suite 2 Coeur d'Alene, ID 83814		WORKER'S COMPENSATION INSURANCE CARRIER'S (NOT ADJUSTOR'S) NAME AND ADDRESS State Insurance Fund PO Box 83720 Boise, ID 83720
CLAIMANT'S SSN [REDACTED]	CLAIMANT'S BIRTHDATE 8/16/59	DATE OF INJURY OR MANIFESTATION OF OCCUPATIONAL DISEASE 12/5/02
STATE AND COUNTY IN WHICH INJURY OCCURRED Kootenai County, State of Idaho		WHEN INJURED, CLAIMANT WAS EARNING AN AVERAGE WEEKLY WAGE OF: \$7.00 per hour

DESCRIBE HOW INJURY OR OCCUPATIONAL DISEASE OCCURRED (WHAT HAPPENED)
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DATE ON WHICH NOTICE OF INJURY WAS GIVEN TO EMPLOYER 12/6/02	TO WHOM DID YOU GIVE NOTICE supervisor
HOW WAS NOTICE GIVEN: <input type="checkbox"/> ORAL <input checked="" type="checkbox"/> WRITTEN <input type="checkbox"/> OTHER, PLEASE SPECIFY	

ISSUE OR ISSUES INVOLVED All issues

RECEIVED
INDUSTRIAL COMMISSION
2003 MAY 7 11 A 9:51

DO YOU BELIEVE THIS CLAIM PRESENTS A NEW QUESTION OF LAW OR A COMPLICATED SET OF FACTS? YES NO IF SO PLEASE STATE WHY.

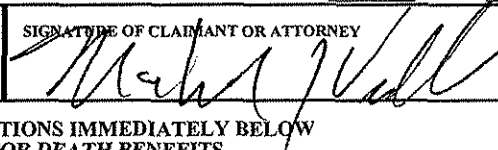
NOTICE: COMPLAINTS AGAINST THE INDUSTRIAL SPECIAL INDEMNITY FUND MUST BE FILED ON FORM I.C. 1002

PHYSICIANS WHO TREATED CLAIMANT (NAME AND ADDRESS) James Lea, M.D., 2022 Government Way, Coeur d'Alene, ID 83814, Michael J. Carraher, M.D., 1300 E. Mullan, Suite 1600, Post Falls, ID 83854, and James Dunlap, M.D., 910 W 5th Avenue, Suite 500, Spokane, WA 99204

WHAT MEDICAL COSTS HAVE YOU INCURRED TO DATE?

WHAT MEDICAL COSTS HAS YOUR EMPLOYER PAID, IF ANY \$ _____ WHAT MEDICAL COSTS HAVE YOU PAID \$ none

I AM INTERESTED IN MEDIATING THIS CLAIM, IF THE OTHER PARTIES AGREE YES NO

DATE <u>5/5/03</u>	SIGNATURE OF CLAIMANT OR ATTORNEY 	
PLEASE ANSWER THE SET OF QUESTIONS IMMEDIATELY BELOW ONLY IF CLAIM IS MADE FOR DEATH BENEFITS		
NAME OF DECEASED	DATE OF DEATH	RELATION OF DECEASED TO CLAIMANT
WAS CLAIMANT DEPENDANT ON DECEASED YES <input type="checkbox"/> NO <input type="checkbox"/>	DID CLAIMANT LIVE WITH DECEASED AT THE TIME OF THE ACCIDENT YES <input type="checkbox"/> NO <input type="checkbox"/>	

CLAIMANT MUST COMPLETE, SIGN AND DATE THE FOLLOWING:

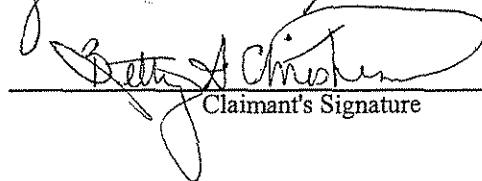
MEDICAL RELEASE FORM

I hereby authorize any defendant and defendant's legal counsel, at their sole expense, to examine, inspect, receive or take copies of any medical reports, records, x-rays or test results of hospitals, physicians or any other person, or to receive information from any person having examined me and their diagnosis, relative to my past, present and future physical and mental condition.

I also authorize and direct that a duplicate set of all documents or written records provided to said law firm, or any individual member thereof be also provided to my attorney MICHAEL J. VERBILLIS. The defendant requesting my records shall bear the expense incurred in production of such duplicate set.

I further authorize that copies of this authorization may be used in lieu of the original. THIS AUTHORIZATION IS VALID ONLY FOR THE DURATION OF THE PENDING LITIGATION. It is further understood that all information obtained under this authorization shall be regarded as confidential and maintained as such.

Dated this 1st day of May, 2003


Claimant's Signature

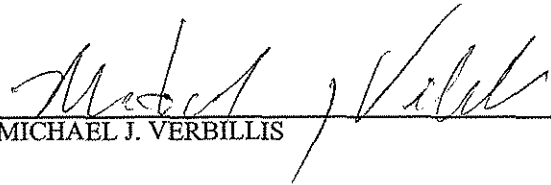
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Further information may be obtained from: Industrial Commission, Judicial Division, 317 Main Street, Boise, Idaho 83720-6000 (208)334-6000

CERTIFICATE OF SERVICE

I hereby certify that on the 5 day of May, 2003, that a true and correct copy of the foregoing was mailed by regular, postage pre-paid, addressed to:

S. L. Start & Associates, Inc.
1323 E Sherman, Suite 2
Coeur d'Alene, ID 83814

State Insurance Fund
PO Box 83720
Boise, ID 83720



MICHAEL J. VERBILLIS

AMENDED WORKERS COMPENSATION COMPLAINT IC 03-004986

CLAIMANT'S NAME AND ADDRESS BETTY S. CHRISTENSEN c/o Michael Verbillis P.O. Box 519 Coeur d'Alene, ID 83816-0519		CLAIMANT'S ATTORNEY'S NAME AND ADDRESS Michael Verbillis P.O. Box 519 Coeur d'Alene, ID 83816-0519	
EMPLOYER'S NAME AND ADDRESS S. L. Start & Associates, Inc. 1323 E Sherman, Suite 2 Coeur d'Alene, ID 83814		WORKER'S COMPENSATION INSURANCE CARRIER'S (NOT ADJUSTOR'S) NAME AND ADDRESS State Insurance Fund PO Box 83720 Boise, ID 83720	
CLAIMANT'S SSN [REDACTED]	CLAIMANT'S BIRTHDATE [REDACTED]	DATE OF INJURY OR MANIFESTATION OF OCCUPATIONAL DISEASE 12/9/02	
STATE AND COUNTY IN WHICH INJURY OCCURRED Kootenai County, State of Idaho		WHEN INJURED, CLAIMANT WAS EARNING AN AVERAGE WEEKLY WAGE OF: \$7.00 per hour	

DESCRIBE HOW INJURY OR OCCUPATIONAL DISEASE OCCURRED (WHAT HAPPENED)
catching an obese patient, who had fainted while walking

NATURE OF MEDICAL PROBLEMS ALLEGED AS A RESULT OF ACCIDENT OR OCCUPATIONAL DISEASE Injury to shoulders, spine, lower back, right knee, right ankle and right foot, including rupture of extensor hallucis

WHAT WORKER'S COMPENSATION BENEFITS ARE YOU CLAIMING AT THIS TIME? Total Temporary Disability, Permanent Partial Impairment, Disability in Excess of Impairment, Medical Benefits, and Attorney's Fees for the denial of time loss and medical benefits.

DATE ON WHICH NOTICE OF INJURY WAS GIVEN TO EMPLOYER 12/9/02	TO WHOM DID YOU GIVE NOTICE supervisor
HOW WAS NOTICE GIVEN: <input type="checkbox"/> ORAL <input checked="" type="checkbox"/> WRITTEN <input type="checkbox"/> OTHER, PLEASE SPECIFY	

ISSUE OR ISSUES INVOLVED All issues

DO YOU BELIEVE THIS CLAIM PRESENTS A NEW QUESTION OF LAW OR A COMPLICATED SET OF FACTS? YES NO IF SO PLEASE STATE WHY

RECEIVED
INDUSTRIAL COMMISSION
2003 MAY -7 A 9:51

NOTICE: COMPLAINTS AGAINST THE INDUSTRIAL SPECIAL INDEMNITY FUND MUST BE FILED ON FORM I.C. 1002

PHYSICIANS WHO TREATED CLAIMANT (NAME AND ADDRESS) James Lea, M.D., 2022 Government Way, Coeur d'Alene, ID 83814, Michael J. Carraher, M.D., 1300 E. Mullan, Suite 1600, Post Falls, ID 83854, and James Dunlap, M.D., 910 W 5th Avenue, Suite 500, Spokane, WA 99204

WHAT MEDICAL COSTS HAVE YOU INCURRED TO DATE?

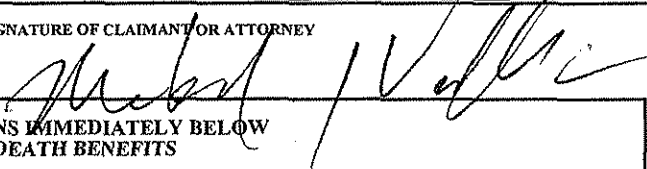
WHAT MEDICAL COSTS HAS YOUR EMPLOYER PAID, IF ANY \$ _____ WHAT MEDICAL COSTS HAVE YOU PAID \$ none

I AM INTERESTED IN MEDIATING THIS CLAIM, IF THE OTHER PARTIES AGREE YES NO

DATE

5/5/03

SIGNATURE OF CLAIMANT OR ATTORNEY



PLEASE ANSWER THE SET OF QUESTIONS IMMEDIATELY BELOW ONLY IF CLAIM IS MADE FOR DEATH BENEFITS

NAME OF DECEASED	DATE OF DEATH	RELATION OF DECEASED TO CLAIMANT
WAS CLAIMANT DEPENDANT ON DECEASED YES _____ NO _____	DID CLAIMANT LIVE WITH DECEASED AT THE TIME OF THE ACCIDENT YES _____ NO _____	

CLAIMANT MUST COMPLETE, SIGN AND DATE THE FOLLOWING:

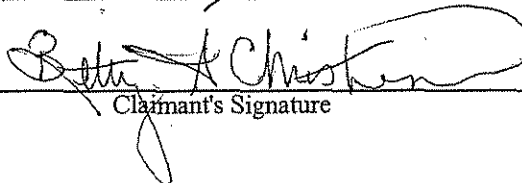
MEDICAL RELEASE FORM

I hereby authorize any defendant and defendant's legal counsel, at their sole expense, to examine, inspect, receive or take copies of any medical reports, records, x-rays or test results of hospitals, physicians or any other person, or to receive information from any person having examined me and their diagnosis, relative to my past, present and future physical and mental condition.

I also authorize and direct that a duplicate set of all documents or written records provided to said law firm, or any individual member thereof be also provided to my attorney MICHAEL J. VERBILLIS. The defendant requesting my records shall bear the expense incurred in production of such duplicate set.

I further authorize that copies of this authorization may be used in lieu of the original. THIS AUTHORIZATION IS VALID ONLY FOR THE DURATION OF THE PENDING LITIGATION. It is further understood that all information obtained under this authorization shall be regarded as confidential and maintained as such.

Dated this 1st day of May, 2003



Claimant's Signature

NOTICE! An Employer or Insurance Company served with a Complaint must file an Answer on Form I.C. 1003 with the Industrial Commission with 21 days of the date of service as specified on the certificate of mailing to avoid default. If no answer is filed, a Default Award may be entered!

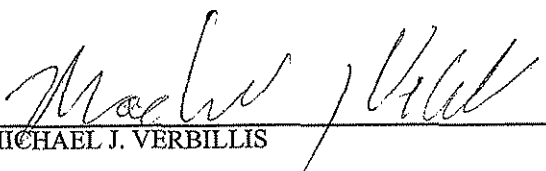
Further information may be obtained from: Industrial Commission, Judicial Division, 317 Main Street, Boise, Idaho 83720-6000 (208)334-6000

CERTIFICATE OF SERVICE

I hereby certify that on the 5 day of May, 2003, that a true and correct copy of the foregoing was mailed by regular, postage pre-paid, addressed to:

S. L. Start & Associates, Inc.
1323 E Sherman, Suite 2
Coeur d'Alene, ID 83814

State Insurance Fund
PO Box 83720
Boise, ID 83720



MICHAEL J. VERBILLIS

**ANSWER TO AMENDED COMPLAINT
I.C. NO. 02-525919**

CLAIMANT'S NAME AND ADDRESS Betty S. Christensen c/o Michael Verbillis P. O. Box 519 Coeur d'Alene, Idaho 83816-0519	CLAIMANT'S ATTORNEY'S NAME AND ADDRESS Michael Verbillis P. O. Box 519 Coeur d'Alene, Idaho 83816-0519
EMPLOYER'S NAME AND ADDRESS S. L. Start & Associates, Inc. 1323 East Sherman Avenue, Suite 2 Coeur d'Alene, Idaho 83814	WORKERS' COMPENSATION INSURANCE CARRIER'S (NOT ADJUSTOR'S) NAME AND ADDRESS State Insurance Fund P. O. Box 83720 Boise, Idaho 83720-0044
ATTORNEY REPRESENTING EMPLOYER OR EMPLOYER/SURETY (NAME AND ADDRESS) Paul J. Augustine Hall, Farley, Oberrecht & Blanton, P.A. P. O. Box 1271 Boise, Idaho 83701	ATTORNEY REPRESENTING INDUSTRIAL SPECIAL INDEMNITY FUND (NAME AND ADDRESS)

The above-named employer or employer/surety responds to Claimant's Complaint by stating:
 The Industrial Special Indemnity Fund responds to the Complaint against the ISIF by stating:

RECEIVED
 INDUSTRIAL COMMISSION
 2003 MAY 14 P 4:30

IT IS: (Check One)	
Admitted	Denied
X	
N/A	N/A
X	
X	
X	
N/A	N/A
X	
N/A	N/A
N/A	N/A
	X
X	

- That the accident alleged in the Complaint actually occurred on or about the time claimed.
- That the occupational exposure alleged in the Complaint actually occurred on or about the time claimed.
- That the employer/employee relationship existed.
- That the parties were subject to the provisions of the Idaho Workers' Compensation Act.
- That the condition for which benefits are claimed was partly caused by an accident arising out of and in the course of Claimant's employment.
- That, if an occupational disease is alleged, manifestation of such disease is or was due to the nature of the employment in which the hazards of such disease actually exist, are characteristic of and peculiar to the trade, occupation, process, or employment.
- That notice of the accident causing the injury, was given to the employer as soon as practical but not later than 60 days after such accident.
- That notice of the occupational disease was given to the employer as soon as practical but not later than 60 days of the manifestation of such occupational disease.
- That, if an occupational disease is alleged, notice of such was given to the employer within five months after the employment had ceased in which it is claimed the disease was contracted.
- That the rate of wages claimed is correct. If denied, state the average weekly wage pursuant to Idaho Code, Section 72-419: \$ under investigation.
- That the alleged employer was insured or permissibly self-insured under the Idaho Workers' Compensation Act.

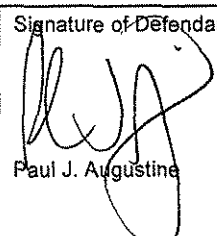
12. What benefits, if any, do you concede are due Claimant?

Six weeks of physical therapy.

11. State with specificity what matters are in dispute and your reason for denying liability, together with any affirmative defenses.

See Exhibit "A" attached hereto.

Under the Commission rules, you have twenty-one (21) days from the date of service of the Complaint to answer the Complaint. A copy of your Answer must be mailed to the Commission and a copy must be served on all parties or their attorneys by regular U.S. mail or by personal service of process. Unless you deny liability, you should pay immediately the compensation required by law, and not cause the claimant, as well as yourself, the expense of a hearing. All compensation which is concededly due and accrued should be paid. Payments due should not be withheld because a Complaint has been filed. Rule III(D), Judicial Rules of Practice and Procedure under the Idaho Workers' Compensation Law, applies. Complaints against the Industrial Special Indemnity Fund must be filed on Form I.C. 1002.

I AM INTERESTED IN MEDIATING THIS CLAIM, IF THE OTHER PARTIES AGREE.			__ YES	x NO
DO YOU BELIEVE THIS CLAIM PRESENTS A NEW QUESTION OF LAW OR A COMPLICATED SET OF FACTS? IF SO, PLEASE STATE.				
NO.				
Amount of Compensation Paid to Date			Dated	Signature of Defendant or Attorney
PPD	TTD	Medical	May 14, 2003	 Paul J. Augustine
\$- -0-	\$- -0-	\$ -0-		

PLEASE COMPLETE

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of May 2003 I caused to be served a true and correct copy of the foregoing ANSWER upon:

CLAIMANT'S NAME AND ADDRESS

Michael Verbillis

P. O. Box 519

Coeur d'Alene, Idaho 83816-0519

EMPLOYER AND SURETY'S NAME AND ADDRESS

State Insurance Fund

1215 W. State Street

P. O. Box 83720

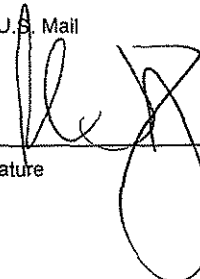
Boise, Idaho 83720-0044

INDUSTRIAL SPECIAL INDEMNITY FUND (if applicable)

Via: personal service of process
 regular U.S. Mail

Via: personal service of process
 regular U.S. Mail

Via: personal service of process
 regular U.S. Mail



 Signature

EXHIBIT "A"

AFFIRMATIVE DEFENSES

1. Defendants deny each and every allegation of the Amended Complaint not specifically admitted herein.
2. Defendants contend that the condition of which Claimant complains is attributable, in whole or in part, to a pre-existing injury, infirmity or condition such that Claimant's permanent disability, if any, is subject to apportionment pursuant to the provisions of Idaho Code Section 72-406.
3. Defendants contend that the condition of which Claimant complains may be attributable, in whole or in part, to a subsequent, intervening cause for which Defendants, and each of them, are not responsible, such that Defendants' liability, if any, is thereby reduced or extinguished.
4. Defendants deny that they have acted unreasonably and Claimant is therefore not entitled to an award of attorney fees pursuant to the provisions of Idaho Code Section 72-804.
5. Whether Claimant unreasonably failed to submit to a medical examination such that no compensation is payable to her pursuant to Idaho Code Section 72-434.

**ANSWER TO AMENDED COMPLAINT
I.C. NO. 03-004986**

CLAIMANT'S NAME AND ADDRESS Betty S. Christensen c/o Michael Verbillis P. O. Box 519 Coeur d'Alene, Idaho 83816-0519	CLAIMANT'S ATTORNEY'S NAME AND ADDRESS Michael Verbillis P. O. Box 519 Coeur d'Alene, Idaho 83816-0519
EMPLOYER'S NAME AND ADDRESS S. L. Start & Associates, Inc. 1323 East Sherman Avenue, Suite 2 Coeur d'Alene, Idaho 83814	WORKERS' COMPENSATION INSURANCE CARRIER'S (NOT ADJUSTOR'S) NAME AND ADDRESS State Insurance Fund P. O. Box 83720 Boise, Idaho 83720-0044
ATTORNEY REPRESENTING EMPLOYER OR EMPLOYER/SURETY (NAME AND ADDRESS) Paul J. Augustine Hall, Farley, Oberrecht & Blanton, P.A. P. O. Box 1271 Boise, Idaho 83701	ATTORNEY REPRESENTING INDUSTRIAL SPECIAL INDEMNITY FUND (NAME AND ADDRESS)

The above-named employer or employer/surety responds to Claimant's Complaint by stating:
 The Industrial Special Indemnity Fund responds to the Complaint against the ISIF by stating:

RECEIVED
 INDUSTRIAL COMMISSION
 2003 MAY 14 P 4:38

IT IS: (Check One)	
Admitted	Denied
X	
N/A	N/A
X	
X	
X	
N/A	N/A
X	
N/A	N/A
N/A	N/A
	X
X	

- That the accident alleged in the Complaint actually occurred on or about the time claimed.
- That the occupational exposure alleged in the Complaint actually occurred on or about the time claimed.
- That the employer/employee relationship existed.
- That the parties were subject to the provisions of the Idaho Workers' Compensation Act.
- That the condition for which benefits are claimed was partly caused by an accident arising out of and in the course of Claimant's employment.
- That, if an occupational disease is alleged, manifestation of such disease is or was due to the nature of the employment in which the hazards of such disease actually exist, are characteristic of and peculiar to the trade, occupation, process, or employment.
- That notice of the accident causing the injury, was given to the employer as soon as practical but not later than 60 days after such accident.
- That notice of the occupational disease was given to the employer as soon as practical but not later than 60 days of the manifestation of such occupational disease.
- That, if an occupational disease is alleged, notice of such was given to the employer within five months after the employment had ceased in which it is claimed the disease was contracted.
- That the rate of wages claimed is correct. If denied, state the average weekly wage pursuant to Idaho Code, Section 72-419: \$ under investigation.
- That the alleged employer was insured or permissibly self-insured under the Idaho Workers' Compensation Act.

12. What benefits, if any, do you concede are due Claimant?

Six weeks of physical therapy.

11. State with specificity what matters are in dispute and your reason for denying liability, together with any affirmative defenses.

See Exhibit "A" attached hereto.

Under the Commission rules, you have twenty-one (21) days from the date of service of the Complaint to answer the Complaint. A copy of your Answer must be mailed to the Commission and a copy must be served on all parties or their attorneys by regular U.S. mail or by personal service of process. Unless you deny liability, you should pay immediately the compensation required by law, and not cause the claimant, as well as yourself, the expense of a hearing. All compensation which is concededly due and accrued should be paid. Payments due should not be withheld because a Complaint has been filed. Rule III(D), Judicial Rules of Practice and Procedure under the Idaho Workers' Compensation Law, applies. Complaints against the Industrial Special Indemnity Fund must be filed on Form I.C. 1002.

I AM INTERESTED IN MEDIATING THIS CLAIM, IF THE OTHER PARTIES AGREE.			___ YES	x NO
DO YOU BELIEVE THIS CLAIM PRESENTS A NEW QUESTION OF LAW OR A COMPLICATED SET OF FACTS? IF SO, PLEASE STATE.				
NO.				
Amount of Compensation Paid to Date			Dated	Signature of Defendant or Attorney
PPD	TTD	Medical	May 14, 2003	Paul J. Augustine
\$- -0-	\$- -0-	\$ -0-		

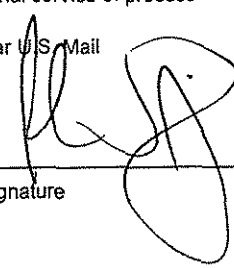
PLEASE COMPLETE

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of May 2003 I caused to be served a true and correct copy of the foregoing ANSWER upon:

<p>CLAIMANT'S NAME AND ADDRESS</p> <p>Michael Verbillis</p> <hr/> <p>P. O. Box 519</p> <hr/> <p>Coeur d'Alene, Idaho 83816-0519</p> <hr/>	<p>EMPLOYER AND SURETY'S NAME AND ADDRESS</p> <p>State Insurance Fund</p> <hr/> <p>1215 W. State Street</p> <hr/> <p>P. O. Box 83720</p> <hr/> <p>Boise, Idaho 83720-0044</p> <hr/>	<p>INDUSTRIAL SPECIAL INDEMNITY FUND (if applicable)</p> <hr/> <hr/> <hr/>
---	---	--

Via: ___ personal service of process x regular U.S. Mail	Via: ___ personal service of process x regular U.S. Mail	Via: ___ personal service of process ___ regular U.S. Mail
--	--	---



 Signature

EXHIBIT "A"

AFFIRMATIVE DEFENSES

1. Defendants deny each and every allegation of the Amended Complaint not specifically admitted herein.
2. Defendants contend that the condition of which Claimant complains is attributable, in whole or in part, to a pre-existing injury, infirmity or condition such that Claimant's permanent disability, if any, is subject to apportionment pursuant to the provisions of Idaho Code Section 72-406.
3. Defendants contend that the condition of which Claimant complains may be attributable, in whole or in part, to a subsequent, intervening cause for which Defendants, and each of them, are not responsible, such that Defendants' liability, if any, is thereby reduced or extinguished.
4. Defendants deny that they have acted unreasonably and Claimant is therefore not entitled to an award of attorney fees pursuant to the provisions of Idaho Code Section 72-804.
5. Whether Claimant unreasonably failed to submit to a medical examination such that no compensation is payable to her pursuant to Idaho Code Section 72-434.

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BETTY S. CHRISTENSEN,)
)
 Claimant,)
)
 v.)
)
 S.L. START & ASSOCIATES, INC.,)
)
 Employer,)
)
 and)
)
 STATE INSURANCE FUND,)
)
 Surety,)
)
 Defendants.)
 _____)

IC 02-525919 ✓
03-004986

ORDER TO CONSOLIDATE

FILED

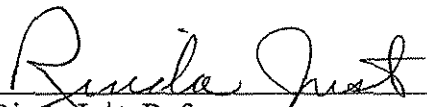
AUG - 8 2003

INDUSTRIAL COMMISSION

Based on its own Motion, the Industrial Commission of the State of Idaho hereby **ORDERS** that those claims presently pending before the Industrial Commission known as **IC 02-525919** and **IC 03-004986** are hereby consolidated into a single proceeding. Future pleadings require reference to the two IC numbers listed above, but only a single document need be filed with the Commission.

DATED this 8 day of August, 2003.

INDUSTRIAL COMMISSION



Rinda Just, Referee

ATTEST:

Donna Bostard
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 8 day of August, 2003 a true and correct copy of **ORDER TO CONSOLIDATE** was served by regular United States mail upon each of the following:

MICHAEL J VERBILLIS
PO BOX 519
CDA ID 83816-0519

PAUL J AUGUSTINE
PO BOX 1271
BOISE ID 83701-1271

djb

Donna Bostard

**WORKERS' COMPENSATION
COMPLAINT AGAINST THE
INDUSTRIAL SPECIAL INDEMNITY FUND (ISIF)
ISIF NO: 2004-1663**

CLAIMANT'S NAME AND ADDRESS BETTY S. CHRISTENSEN c/o Michael Verbillis P.O. Box 519 Coeur d'Alene, ID 83816-0519	CLAIMANT'S ATTORNEY'S NAME AND ADDRESS Michael Verbillis P.O. Box 519 Coeur d'Alene, ID 83816-0519
EMPLOYER'S NAME AND ADDRESS S. L. Start & Associates, Inc. 1323 E Sherman, Suite 2 Coeur d'Alene, ID 83814	EMPLOYER'S ATTORNEY'S NAME AND ADDRESS Paul J. Augustine HALL, FARLEY, OBERRECHT & BLANTON PO Box 1271 Boise, ID 83701
I.C. NUMBER OF CURRENT CLAIM 02-525919 03-004986	WORKERS' COMPENSATION INSURANCE CARRIER'S (NOT ADJUSTERS) NAME AND ADDRESS State Insurance Fund PO Box 83720 Boise, ID 83720
DATE OF INJURY 12/5/02 and 12/9/02	

RECEIVED INDUSTRIAL COMMISSION 2004 AUG -6 11 AM 10:42

NATURE AND CAUSE OF PHYSICAL IMPAIRMENT PRE-EXISTING CURRENT INJURY OR OCCUPATIONAL DISEASE

Pre-existing Charcot-Marie-Tooth Disease and degenerative joint disease

STATE WHY YOU BELIEVE THAT THE CLAIMANT IS TOTALLY AND PERMANENTLY DISABLED.

Due to the combined effects and/or exacerbation of the impairments above - combined with the effects of the injuries of 12/5/02 and 12/9/02, Claimant is unable to work.

DATE: 8/4/04 SIGNATURE OF PARTY OR ATTORNEY: *Michael Verbillis*

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of August, 2004, I caused to be served a true and correct copy of the foregoing Complaint upon:

ISIF PO Box 83720 Department of Administration Boise, ID 83720-7901	via: <input type="checkbox"/> personal service of process <input checked="" type="checkbox"/> regular U.S. Mail
Claimant's Name: BETTY CHRISTENSEN 4301 N. Ramsey Rd., #F2-14 Coeur d'Alene, ID 83815	via: <input type="checkbox"/> personal service of process <input checked="" type="checkbox"/> regular U.S. Mail
Employer's Name: S. L. START & ASSOCIATES, INC. 1323 E Sherman, Suite 2 Coeur d'Alene, ID 83814	via: <input type="checkbox"/> personal service of process <input checked="" type="checkbox"/> regular U.S. Mail
Surety's Name: STATE INSURANCE FUND PO Box 83720 Boise, ID 83720	via: <input type="checkbox"/> personal service of process <input checked="" type="checkbox"/> regular U.S. Mail

NOTICE: Pursuant to the provisions of Idaho Code § 72-334, a notice of claim must first be filed with the Manager of ISIF not less than 60 days prior to the filing of a complaint against ISIF.
You must attach a copy of Form IC 1001 Workers' Compensation Complaint, to this document.
An Answer must be filed on Form IC 1003 within 21 days of service in order to avoid default.

AMENDED WORKERS COMPENSATION COMPLAINT IC 02 325919

CLAIMANT'S NAME AND ADDRESS BETTY S. CHRISTENSEN c/o Michael Verbillis P.O. Box 519 Coeur d'Alene, ID 83816-0519	CLAIMANT'S ATTORNEY'S NAME AND ADDRESS Michael Verbillis P.O. Box 519 Coeur d'Alene, ID 83816-0519
EMPLOYER'S NAME AND ADDRESS S. L. Start & Associates, Inc. 1323 E Sherman, Suite 2 Coeur d'Alene, ID 83814	WORKER'S COMPENSATION INSURANCE CARRIER'S (NOT ADJUSTOR'S) NAME AND ADDRESS State Insurance Fund PO Box 83720 Boise, ID 83720
[REDACTED] BIRTHDATE [REDACTED]	DATE OF INJURY OR MANIFESTATION OF OCCUPATIONAL DISEASE 12/5/02
STATE AND COUNTY IN WHICH INJURY OCCURRED Kootenai County, State of Idaho	WHEN INJURED, CLAIMANT WAS EARNING AN AVERAGE WEEKLY WAGE OF: \$7.00 per hour

DESCRIBE HOW INJURY OR OCCUPATIONAL DISEASE OCCURRED (WHAT HAPPENED)
 Attempting to assist in lifting a patient from a confined space on a bus

NATURE OF MEDICAL PROBLEMS ALLEGED AS A RESULT OF ACCIDENT OR OCCUPATIONAL DISEASE Injury to shoulders, spine, lower back, right knee, right ankle and right foot, including rupture of extensor hallucis

WHAT WORKER'S COMPENSATION BENEFITS ARE YOU CLAIMING AT THIS TIME? Total Temporary Disability, Permanent Partial Impairment, Disability in Excess of Impairment, Medical Benefits, and Attorney's Fees for the denial of time loss and medical benefits.

DATE ON WHICH NOTICE OF INJURY WAS GIVEN TO EMPLOYER 12/6/02	TO WHOM DID YOU GIVE NOTICE supervisor
HOW WAS NOTICE GIVEN: <input type="checkbox"/> ORAL <input checked="" type="checkbox"/> WRITTEN <input type="checkbox"/> OTHER. PLEASE SPECIFY	

ISSUE OR ISSUES INVOLVED All issues

RECEIVED
INDUSTRIAL COMMISSION
MAY - 7 11 A 9:51

DO YOU BELIEVE THIS CLAIM PRESENTS A NEW QUESTION OF LAW OR A COMPLICATED SET OF FACTS? YES NO IF SO PLEASE STATE WHY.

NOTICE: COMPLAINTS AGAINST THE INDUSTRIAL SPECIAL INDEMNITY FUND MUST BE FILED ON FORM LC 1002.

PHYSICIANS WHO TREATED CLAIMANT (NAME AND ADDRESS) James Lea, M.D., 2022 Government Way, Coeur d'Alene, ID 83814, Michael J. Carraher, M.D., 1300 E. Mullan, Suite 200, Post Falls, ID 83854, and James Dunlap, M.D., 910 W 5th Avenue, Suite 500, Spokane, WA 99204

WHAT MEDICAL COSTS HAVE YOU INCURRED TO DATE?

WHAT MEDICAL COSTS HAS YOUR EMPLOYER PAID, IF ANY \$ _____ WHAT MEDICAL COSTS HAVE YOU PAID \$ none

I AM INTERESTED IN MEDIATING THIS CLAIM, IF THE OTHER PARTIES AGREE YES NO

DATE

5/5/03

SIGNATURE OF CLAIMANT OR ATTORNEY

/s/

PLEASE ANSWER THE SET OF QUESTIONS IMMEDIATELY BELOW ONLY IF CLAIM IS MADE FOR DEATH BENEFITS

NAME OF DECEASED	DATE OF DEATH	RELATION OF DECEASED TO CLAIMANT
WAS CLAIMANT DEPENDANT ON DECEASED YES NO	DID CLAIMANT LIVE WITH DECEASED AT THE TIME OF THE ACCIDENT YES NO	

CLAIMANT MUST COMPLETE, SIGN AND DATE THE FOLLOWING:

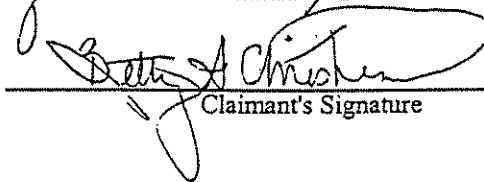
MEDICAL RELEASE FORM

I hereby authorize any defendant and defendant's legal counsel, at their sole expense, to examine, inspect, receive or take copies of any medical reports, records, x-rays or test results of hospitals, physicians or any other person, or to receive information from any person having examined me and their diagnosis, relative to my past, present and future physical and mental condition.

I also authorize and direct that a duplicate set of all documents or written records provided to said law firm, or any individual member thereof be also provided to my attorney MICHAEL J. VERBILLIS. The defendant requesting my records shall bear the expense incurred in production of such duplicate set.

I further authorize that copies of this authorization may be used in lieu of the original. THIS AUTHORIZATION IS VALID ONLY FOR THE DURATION OF THE PENDING LITIGATION. It is further understood that all information obtained under this authorization shall be regarded as confidential and maintained as such.

Dated this 1st day of May, 2003


Claimant's Signature

NOTICE! An Employer or Insurance Company served with a Complaint must file an Answer on Form I.C. 1003 with the Industrial Commission with 21 days of the date of service as specified on the certificate of mailing to avoid default. If no answer is filed, a Default Award may be entered!

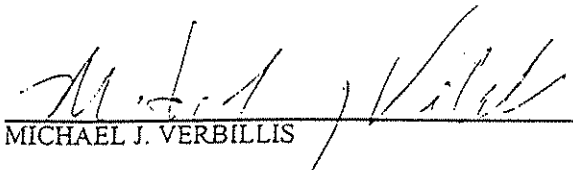
Further information may be obtained from: Industrial Commission, Judicial Division, 317 Main Street, Boise, Idaho 83720-6000 (208)334-6000

CERTIFICATE OF SERVICE

I hereby certify that on the 5 day of May, 2003, that a true and correct copy of the foregoing was mailed by regular, postage pre-paid, addressed to:

S. L. Start & Associates, Inc.
1323 E Sherman, Suite 2
Coeur d'Alene, ID 83814

State Insurance Fund
PO Box 83720
Boise, ID 83720


MICHAEL J. VERBILLIS

AMENDED WORKERS COMPENSATION COMPLAINT IC 05-004986

CLAIMANT'S NAME AND ADDRESS BETTY S. CHRISTENSEN c/o Michael Verbillis P.O. Box 519 Coeur d'Alene, ID 83816-0519	CLAIMANT'S ATTORNEY'S NAME AND ADDRESS Michael Verbillis P.O. Box 519 Coeur d'Alene, ID 83816-0519
EMPLOYER'S NAME AND ADDRESS S. L. Start & Associates, Inc. 1323 E Sherman, Suite 2 Coeur d'Alene, ID 83814	WORKER'S COMPENSATION INSURANCE CARRIER'S (NOT ADJUSTOR'S) NAME AND ADDRESS State Insurance Fund PO Box 83720 Boise, ID 83720
CLAIMANT'S SSN [REDACTED] BIRTHDATE [REDACTED]	DATE OF INJURY OR MANIFESTATION OF OCCUPATIONAL DISEASE: 12/9/02
STATE AND COUNTY IN WHICH INJURY OCCURRED Kootenai County, State of Idaho	WHEN INJURED, CLAIMANT WAS EARNING AN AVERAGE WEEKLY WAGE OF: \$7.00 per hour

DESCRIBE HOW INJURY OR OCCUPATIONAL DISEASE OCCURRED (WHAT HAPPENED)
catching an obese patient, who had fainted while walking

NATURE OF MEDICAL PROBLEMS ALLEGED AS A RESULT OF ACCIDENT OR OCCUPATIONAL DISEASE
Injury to shoulders, spine, lower back, right knee, right ankle and right foot, including rupture of extensor hallucis

WHAT WORKER'S COMPENSATION BENEFITS ARE YOU CLAIMING AT THIS TIME? Total Temporary Disability, Permanent Partial Impairment, Disability in Excess of Impairment, Medical Benefits, and Attorney's Fees for the denial of time loss and medical benefits.

DATE ON WHICH NOTICE OF INJURY WAS GIVEN TO EMPLOYER 12/9/02	TO WHOM DID YOU GIVE NOTICE supervisor
HOW WAS NOTICE GIVEN: <input type="checkbox"/> ORAL <input checked="" type="checkbox"/> WRITTEN <input type="checkbox"/> OTHER, PLEASE SPECIFY	

ISSUE OR ISSUES INVOLVED All issues

DO YOU BELIEVE THIS CLAIM PRESENTS A NEW QUESTION OF LAW OR A COMPLICATED SET OF FACTS? YES NO IF SO PLEASE STATE WHY.

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NOTICE: COMPLAINTS AGAINST THE INDUSTRIAL SPECIAL INDEMNITY FUND MUST BE FILED ON FORM LC 1002

PHYSICIANS WHO TREATED CLAIMANT (NAME AND ADDRESS) James Lea, M.D., 2022 Government Way, Coeur d'Alene, ID 83814, Michael J. Carraher, M.D., 1300 E. Mullan, Suite 100, Post Falls, ID 83854, and James Dunlap, D., 910 W 5th Avenue, Suite 500, Spokane, WA 99204

WHAT MEDICAL COSTS HAVE YOU INCURRED TO DATE?

WHAT MEDICAL COSTS HAS YOUR EMPLOYER PAID, IF ANY \$ _____ WHAT MEDICAL COSTS HAVE YOU PAID \$ none

I AM INTERESTED IN MEDIATING THIS CLAIM. IF THE OTHER PARTIES AGREE YES NO

DATE

5/5/03

SIGNATURE OF CLAIMANT OR ATTORNEY

151

PLEASE ANSWER THE SET OF QUESTIONS IMMEDIATELY BELOW ONLY IF CLAIM IS MADE FOR DEATH BENEFITS

NAME OF DECEASED	DATE OF DEATH	RELATION OF DECEASED TO CLAIMANT
WAS CLAIMANT DEPENDANT ON DECEASED YES NO	DID CLAIMANT LIVE WITH DECEASED AT THE TIME OF THE ACCIDENT YES NO	

CLAIMANT MUST COMPLETE, SIGN AND DATE THE FOLLOWING:

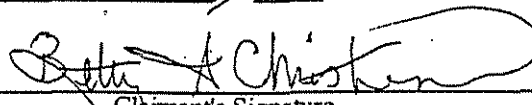
MEDICAL RELEASE FORM

I hereby authorize any defendant and defendant's legal counsel, at their sole expense, to examine, inspect, receive or take copies of any medical reports, records, x-rays or test results of hospitals, physicians or any other person, or to receive information from any person having examined me and their diagnosis, relative to my past, present and future physical and mental condition.

I also authorize and direct that a duplicate set of all documents or written records provided to said law firm, or any individual member thereof be also provided to my attorney MICHAEL J. VERBILLIS. The defendant requesting my records shall bear the expense incurred in production of such duplicate set.

I further authorize that copies of this authorization may be used in lieu of the original. THIS AUTHORIZATION IS VALID ONLY FOR THE DURATION OF THE PENDING LITIGATION. It is further understood that all information obtained under this authorization shall be regarded as confidential and maintained as such.

Dated this 1st day of May, 2003


 Claimant's Signature

NOTICE! An Employer or Insurance Company served with a Complaint must file an Answer on Form I.C. 1003 with the Industrial Commission with 21 days of the date of service as specified on the certificate of mailing to avoid default. If no answer is filed, a Default Award may be entered!

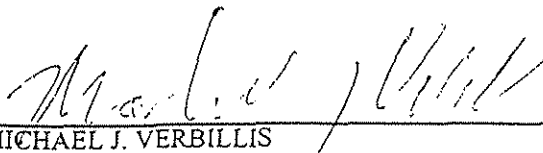
Further information may be obtained from: Industrial Commission, Judicial Division, 317 Main Street, Boise, Idaho 83720-6000 (208)334-6000

CERTIFICATE OF SERVICE

I hereby certify that on the 5 day of May, 2003, that a true and correct copy of the foregoing was mailed by regular, postage pre-paid, addressed to:

S. L. Start & Associates, Inc. :
1323 E Sherman, Suite 2
Coeur d'Alene, ID 83814

State Insurance Fund
PO Box 83720
Boise, ID 83720



MICHAEL J. VERBILLIS

ANSWER TO COMPLAINT

I.C. NO 02-525919 & 03-004986

INJURY DATES: 12/05/02 & 12/09/02

Claimant's Name and Address: BETTY S. CHRISTENSEN % MICHAEL VERBILLIS PO BOX 519 COEUR D'ALENE, ID 83816-0519	Claimant's Attorney's Name and Address: MICHAEL VERBILLIS ATTORNEY AT LAW PO BOX 519 COEUR D'ALENE, ID 83816-0519
Employer's Name and Address: S.L. START & ASSOCIATES INC. 1323 E. SHERMAN, SUITE 2 COEUR D'ALENE, ID 83814	Worker's Compensation Insurance Carrier's (Not Adjuster's) Name and Address: STATE INSURANCE FUND P O BOX 83720 BOISE ID 83720-0044
Attorney Representing Employer or Employer/Surety (Name and Address) PAUL J. AUGUSTINE HALL, FARLEY OBERRECHT & BLANTON PO BOX 1271 BOISE, ID 83701	Attorney Representing Industrial Special Indemnity Fund (Name and Address) THOMAS W. CALLERY JONES, BROWER & CALLERY P O BOX 854 LEWISTON ID 83501

The above-named employer or employer/surety responds to Claimant's Complaint by stating:

The Industrial Special Indemnity Fund responds to the Complaint against the ISIF by stating:

IT IS: (Check One)

ADMITTED DENIED

X		1. That the accident or occupational exposure alleged in the Complaint actually occurred on or about the time claimed.
X		2. That the employer/employee relationship existed.
X		3. That the parties were subject to the provisions of the Idaho Worker's Compensation Act.
	X	4. That the condition for which benefits are claimed was caused partly _____ or entirely _____ by an accident arising out of and in the course of Claimant's employment
	N/A	5. That, if an occupational disease is alleged, manifestation of such disease is or was due to the nature of the employment in which the hazards of such disease actually exist, are characteristic of and peculiar to the trade, occupation, process, or employment
	UNKNOWN TO ISIF	6. That notice of the accident causing the injury, or notice of the occupational disease, was given to the employer as soon as practical but not later than 60 days after such accident or 60 days of the manifestation of such occupational disease.
	N/A	7. That, if an occupational disease is alleged, notice of such was given to the employer within five months after the employment had ceased in which it is claimed the disease was contracted.
	UNKNOWN TO ISIF	8. That the rate of wages claimed is correct. If denied, state the average weekly wage pursuant to Idaho Code, Section 72-419:
X		9. That the alleged employer was insured or permissibly self insured under the Idaho worker's Compensation Act.

10. What Benefits, if any, do you concede are due Claimant?

NONE FROM ISIF

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2004 SEP 27 A 11:45

11. State with specificity what matters are in dispute and your reason for denying liability, together with any affirmative defenses.

**PLEASE SEE EXHIBIT A ATTACHED HERETO AND INCORPORATED HEREIN
BY REFERENCE AS THOUGH SET FORTH IN FULL**

Under the Commission rules, you have twenty-one (21) days from the date of service of the Complaint to answer the Complaint. A copy of your Answer must be mailed to the Commission and a copy must be served on all parties or their attorneys by regular U. S. mail or by personal service of process. Unless you deny liability, you should pay immediately the compensation required by law, and not cause the claimant, as well as yourself, the expense of hearing. All compensation which is concededly due and accrued should be paid. Payments due should not be withheld because a Complaint has been filed. Rule 111(D), Judicial Rules of Practice and Procedure under the Idaho Worker's Compensation Law, applies. Complaints against the Industrial Special Indemnity Fund must be filed on Form I.C.1002.

I am interested in mediating this claim, if the other parties agree. Yes No

Do you believe this Claim presents a new question of law or a complicated set of facts? If so, please state.

NO

Amount of Compensation Paid to Date

PPD	TTD	Medical	Dated	Signature of Defendant or Attorney

Please Complete

I hereby certify that on the 24 day of September, 2004, I caused to be served a true and correct copy of the foregoing Answer upon:

Claimant's Name and Address:

BETTY S. CHRISTENSEN
% MICHAEL VERBILLIS
PO BOX 519
COEUR D'ALENE, ID 83816-0519

Employer and Surety's
Name and Address


S.L. START & ASSOCIATES, INC.
% PAUL J. AUGUSTINE
HALL, FARLEY, OBERRECHT & BLANTON
PO BOX 1271
BOISE, ID 83701

Industrial Special Indemnity Fund
(If Applicable)

via: Personal Service of Process
 X regular U. S. Mail

via: Personal Service of Process
 X regular U. S. Mail

via: Personal Service of Process
 regular U. S. Mail


THOMAS W. CALLERY

AFFIRMATIVE DEFENSES

1. The Industrial Special Indemnity Fund recently received the Workers' Compensation Complaint against the Industrial Special Indemnity Fund and contemplates the initiation of formal discovery. The Fund has limited medical records available and is unable at this time to accurately either admit or deny portions of the Complaint and reserves the right to amend this Answer as necessary and warranted by subsequent discovery.
2. Claimant is not totally and permanently disabled.
3. If Claimant is totally disabled, it is not due to the aggravation and acceleration of a pre-existing condition nor due to the combined affects of pre and post injury conditions.
4. Claimant incurred no physical impairment from the alleged accident which gives rise to this action.
5. Claimant's disability, if any, is due to the natural progression of an underlying degenerative process and was not aggravated or accelerated by a work injury, and Claimant would be so disabled irrespective of the events of Claimant's employment.
6. Claimant is capable of retraining for employment suitable to Claimant's alleged limitations but has either failed to pursue suitable employment or to cooperate in retraining for such employment.
7. The Defendant, Industrial Special Indemnity Fund, is without sufficient information to know whether Claimant has complied with applicable statutes of limitations and therefore alleges affirmatively that Claimant has not.

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BETTY S. CHRISTENSEN,)
)
 Claimant,)
)
 v.)
)
 S. L. START & ASSOCIATES, INC.,)
)
 Employer,)
)
 and)
)
 STATE INSURANCE FUND,)
)
 Surety,)
)
 and)
)
 STATE OF IDAHO, INDUSTRIAL)
 SPECIAL INDEMNITY FUND,)
)
 Defendants.)
)
 _____)

**IC 2002-525919
2003-004986**

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

**FILED
NOV 20 2007**

INDUSTRIAL COMMISSION

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Rinda Just, who conducted a hearing in Coeur d'Alene, Idaho, on November 29, 2006. Michael J. Verbillis of Coeur d'Alene represented Claimant. Paul J. Augustine of Boise represented Employer/Surety. Thomas W. Callery of Lewiston represented State of Idaho, Industrial Special Indemnity Fund (ISIF). The parties submitted oral and documentary evidence. Two post-hearing depositions were taken and the parties submitted post-hearing briefs. The matter came under advisement on May 17, 2007, and is now ready for decision.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 1

ISSUES

By agreement of the parties at hearing, the issues to be decided are:

1. Whether the condition for which Claimant seeks benefits was caused by the industrial accident;
2. Whether Claimant's condition is due in whole or in part to a pre-existing and/or subsequent injury/condition;
3. Whether and to what extent Claimant is entitled to the following benefits:
 - a. Temporary partial and/or temporary total disability benefits (TPD/TTD);
 - b. Permanent partial impairment (PPI);
 - c. Disability in excess of impairment; and
 - d. Attorney fees;
4. Whether Claimant is totally and permanently disabled;
5. Whether apportionment for a pre-existing or subsequent condition pursuant to Idaho Code § 72-406 is appropriate;
6. Whether the Industrial Special Indemnity Fund is liable under Idaho Code § 72-332; and
7. Apportionment under the *Carey* formula.

Claimant did not pursue her claim for temporary partial and/or temporary total disability benefits at hearing or in the post-hearing briefing, and the Referee considers that issue to be waived. Similarly, none of the Defendants seriously challenged Claimant's assertion that she sustained injuries as the result of two work-related accidents, and the issue was not addressed in their briefing. The Referee considers the causation issue to have been waived.

CONTENTIONS OF THE PARTIES

Claimant asserts that she injured her low back, her right great toe, and her right shoulder as a result of two industrial accidents that occurred on December 5 and December 9, 2002. Both

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 2

accidents were the result of Claimant's efforts to protect Employer's customers from injury. Claimant sustained permanent impairments as a result of her injuries, which combined with a pre-existing injury to render her totally and permanently disabled. Claimant is entitled to total permanent disability benefits, which the Commission should apportion between Employer/Surety and ISIF as required by the *Carey* formula.

Employer/Surety contends that Claimant was permanently and totally disabled as an odd-lot worker prior to her December 2002 industrial accidents. Claimant's current disability is due not to her industrial injuries, but rather her pre-existing Charcot-Marie-Tooth (CMT) Syndrome, a progressive neurological disease. Alternatively, Employer/Surety argues that if the Commission finds that Claimant is totally and permanently disabled as the result of a combination of her pre-existing CMT and her 2002 industrial injuries, then *Carey* apportionment would place most of the liability for disability benefits on ISIF. Finally, Employer/Surety vociferously disputes Claimant's request for attorney fees, asserting that Employer/Surety has promptly paid for all medical care (some of it more than once), while Claimant has failed to reimburse medical providers with the funds provided by Employer/Surety.

ISIF argues that Claimant was an odd-lot worker prior to her December 2002 injuries. Additionally, ISIF asserts that while Claimant's condition has worsened since her industrial accidents, she has failed to prove the degree, if any, to which her industrial injuries contributed to her current condition. Under either analysis, Claimant's pre-existing impairment did not combine with the injury from her last accident to render her totally and permanently disabled.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant, Michael Carraher, M.D., Dan Brownell, and Douglas

Crum, CDMS, taken at hearing;

2. Claimant's Exhibits 1 through 18, Employer/Surety's Exhibits A through C, E through I, and L through P, and ISIF Exhibits 1 through 18, all admitted at hearing; together with Employer/Surety Exhibit Q, which was submitted post-hearing by agreement of the parties;¹

3. The post-hearing depositions of Mark Bengtson, MPT, taken January 3, 2007, and Tom L. Moreland, taken January 30, 2007;

All objections made during the deposition of Mark Bengtson are overruled. After having considered all the above evidence and the briefs of the parties, the Referee submits the following findings of fact and conclusions of law for review by the Commission.

FINDINGS OF FACT

1. Claimant was 47 years of age at the time of hearing. She was single, and the mother of adult children.

EDUCATION

2. Claimant graduated from high school in Post Falls, Idaho, in 1977. In 1988, Claimant completed a course of study at Trend College in Spokane, Washington, where she

¹ The exhibits in this proceeding were voluminous, constituting the equivalent of four four-inch binders. Despite the pleas of the Referee that the parties submit joint exhibits, each party submitted proposed exhibits. On the eve of hearing, counsel for Employer/Surety did remove from his submission a number of proposed exhibits that were duplicative, for which the Referee is grateful. However, in general, the bulk of the exhibits submitted to the Referee were in complete disarray. Most were not in proper chronological order (oldest first, most recent, last). In one submission (Dr. Carraher's records), it was evident that the party submitting them had received them at different times over the lengthy history of the proceeding, but had made no attempt to integrate the multiple submissions. This Referee is abundantly aware that it is extraordinarily time-consuming to sort these records, weed out duplicates, and put them in proper chronological order. Presumably, counsel have staff to assist with this process. Whether or not that is the case, it is incumbent upon counsel to ensure that exhibits submitted to the Commission are complete, minimize unnecessary duplication, are tabbed for easy reference to individual providers, are in good chronological order for each provider, and are secured or bound by some means that ensures they are easy to read and review. Counsel's time spent preparing Referee-friendly exhibits will pay off as time saved when the case comes under advisement.

trained to be a medical secretary and a medical assistant. Claimant received national certification from the American Association of Medical Assistants in 1991.

PRE-INJURY WORK HISTORY

3. Following her graduation from high school, Claimant worked for an electronics manufacturer in Spokane doing assembly work until she left the state in 1978. Claimant returned to Idaho in 1979, and worked for another electronics manufacturer until she was laid off. Claimant and her husband moved to Oregon for two years, and then returned to the North Idaho/Spokane area in the mid 1980s. Upon her return to the area, Claimant directed a large day care center in Spokane.

4. Following her graduation from Trend College, Claimant worked in a variety of medical settings on a temporary basis until she found full-time work with Ironwood Family Practice in 1990. In 1991, Claimant went to work for Group Health Northwest (GHN), where she remained until 1996. While working for GHN, Claimant sustained a series of four industrial injuries to her right foot and ankle, beginning in 1991. All four injuries were accepted and workers' compensation benefits for all four incidents were paid under a 1992 claim. During treatment of the injured foot, Claimant was diagnosed with a degenerative neurological condition. The foot injury, together with Claimant's neurological condition, ultimately led to a separation in 1996 when the employer could not accommodate her physical restrictions.

5. During her last two years at GHN, Claimant also worked weekends at Kootenai Medical Center (KMC) in the emergency department. Claimant quit KMC about the same time she left GHN.

6. In 1997 or 1998, Claimant qualified for disability under Social Security and began receiving benefits.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 5

7. In 1997, Claimant began working part-time for Dr. Carraher. Claimant had worked with Dr. Carraher when he was associated with GHN, and he had been her treating physician for many years. Dr. Carraher was just starting his private practice, and he was able to accommodate Claimant with limited hours, frequent breaks, and opportunities for sedentary work. Initially, Claimant worked sixteen to twenty hours per week for Dr. Carraher, but her work hours were reduced to eight hours per week in 1998. By 2000, Dr. Carraher's practice had become busier, and he could no longer accommodate Claimant's physical limitations and limited work schedule.

8. From May to October 2000, Claimant assisted Coeur d'Alene Hand Therapy in setting up a new office and hiring permanent staff, working an average of slightly more than ten hours per week.

9. Thereafter, Claimant worked for about two months for Dr. Beaton, an ENT whose nurse was out on maternity leave. Claimant worked slightly over ten hours per week on average for Dr. Beaton.

10. In 2001, Claimant went to work for Lakeland Family Medical. This was another start-up practice, where Claimant was able to work limited hours. She remained with Lakeland until February 2002. During her tenure with Lakeland, she averaged fourteen hours per week. In November 2001, Dr. Carraher restricted Claimant to between eight and twelve hours of work per week, one day per week, as a result of her degenerative neurological condition. Claimant's average work hours per week represent more working hours before the restriction and significantly fewer hours after November 2001. When the practice became busier, Claimant could no longer meet the demands of her employer, and left Lakeland Family Medical.

11. As evidenced by a number of reference letters in the record of this proceeding,

Claimant was a valued employee everywhere she worked. Employers were willing to accommodate her limitations because of her skills, and were consistently sorry to see her go when the demands of their practice began to exceed her work capacity.

PRE-EXISTING CONDITIONS

12. Claimant underwent bi-lateral knee surgery in the mid-1970s.

13. In September 1991, while Claimant was working for Group Health Northwest, she tripped while at work and injured her right foot. Claimant sustained additional right foot/ankle injuries in 1992, 1993, and 1994. During the course of treatment of her right foot injuries, Claimant was diagnosed with Charcot-Marie-Tooth Disease (CMT). CMT is a hereditary, progressive neuropathy, characterized by atrophy of the peroneal muscles. It usually affects the nerves in the distal part of the lower extremities, and may progress to weakness in the upper extremities as well. CMT is not always painful, but can be in some patients. Unfortunately, Claimant falls into the latter category.

14. Claimant underwent three surgeries over a period of several years in an attempt to repair the injuries to her right foot that were the result of her work injuries superimposed on her CMT. Ultimately, in the spring of 1996, a triple arthrodesis of her calcaneocuboid joint was performed to stabilize her right foot. Following that surgery, Claimant had an additional surgical procedure to remove the hardware from her fusion that was causing complications. At the conclusion of her treatment in 1996, Sigvard Hansen, M.D., her treating orthopedist at Harborview Medical Center in Seattle, advised that Claimant should be limited to sedentary work "for the rest of her life." ISIF Ex. 9, p. 308. In 1999, Dr. Carraher opined that Claimant would never be able to return to full-time work.

15. Claimant entered into a lump sum settlement agreement regarding her 1992 claim

in August 1997.

16. Following Claimant's CMT diagnosis in 1992, treatment for that condition was provided primarily by Dr. Carraher, and consisted largely of managing Claimant's pain. In Claimant's case, pain management consisted of high doses of narcotic pain relievers, primarily OxyContin (a long-acting narcotic) and Oxycodone (a short-acting narcotic) with hydrocodone as needed for break-through pain. Claimant's medical records are clear that her pain was well controlled with OxyContin, but there were times that Claimant was forced to use Oxycodone instead, which required larger, more frequent dosing to control her pain. Dr. Carraher's prescription practices came under scrutiny by insurers and licensing authorities, and Claimant was referred to a pain management specialist, Andrew Chiu, M.D., who ultimately validated Dr. Carraher's pain management regime for Claimant, including the preferred use of OxyContin over Oxycodone. After some disruption, Claimant's pain management was returned to Dr. Carraher.

17. In December 2001, Dr. Carraher limited Claimant's work to 8-12 hours one day per week because of her CMT.

18. In November 2002, Dr. Carraher was prescribing the following medications related to Claimant's CMT and right foot injury:

Medication	Dose	Frequency
Alprazdam (Xanax); for anxiety	1 mg	1-2 by mouth, at bedtime
Carisoprodol (Soma); muscle relaxer	350 mg	1 by mouth, 3times/day
Hydrocodone APAP; breakthrough pain	7.5/500 mg	1 by mouth, every 4 hours
OxyContin; pain	40 mg	3-4 by mouth, 3 times/day

TIME-OF-INJURY EMPLOYER

19. In November 2002, Claimant started to work for Employer, working with disabled adults as a community support specialist. The position involved helping disabled individuals with social and basic living skills. Because of her physical limitations, Claimant was assigned to clients that did not need assistance in ambulation, transfers, or assists.

20. Claimant sustained injuries in early December while working for Employer. Claimant continued working for Employer through March of 2003, and remained on Employer's payroll until January 31, 2005, when Employer determined that she would be unable to return to her time-of-injury position.

INJURIES

21. On December 5, 2002, Claimant was assisting co-workers in transferring a client from his wheelchair to a seat on Employer's bus. The client started to fall, and Claimant grabbed the client by his gait belt, returning him to his wheelchair and preventing the fall. In doing so, Claimant experienced pain in her shoulders, neck, mid and low back, and right lower extremity. Claimant reported the incident verbally and continued to work, finishing her scheduled workday.

22. On December 9, 2002, Claimant was taking a client to KMC, a popular location to work on client programming needs. As Claimant and her client were entering the medical center, the client became pale and complained of dizziness. Claimant was able to get the client (a very large woman) to a bench to lie down, but in doing so, experienced pain in the same areas that she had injured just days before.

MEDICAL CARE

Claimant's course of treatment for the injuries she received in her two work-related accidents was complex and lengthy. Findings are limited to those necessary to a decision.

23. Claimant first sought medical care for her injuries on December 10, 2002, from Dr. Carraher's physician's assistant. Her initial complaint was low back pain, and the initial diagnosis was a thoracolumbar strain. When Claimant saw Dr. Carraher for a followup on her low back in late December, she also complained that the great toe on her right foot was "floppy." The toe had previously been fused in a neutral position, but was now observed to be "rubbery" in that it can bend up and down." Claimant's Ex. 2, p. 97. An MRI of Claimant's thoracic and lumbar spine showed degenerative changes at T10-11, L3-4, L4-5, and L5-S1.

24. Claimant was referred to James Dunlap, M.D., for consultation and further treatment of her right great toe. Ultimately, in April 2003, Claimant had surgery to fuse her right great toe at the MTP joint. The fusion failed, and the joint was re-fused in 2005.

25. Claimant was referred to James Lea, M.D., for consultation and further treatment of her low back. Dr. Lea opined that Claimant had sustained a back strain of the thoracic and lumbar spine, and though she had some degenerative changes in her spine, she was not a surgical candidate. Dr. Lea recommended physical therapy.

26. In late February 2003, Claimant reported that she was also experiencing right shoulder pain. Dr. Carraher referred Claimant to Michael H. Kody, M.D., for consultation and further treatment of her right shoulder complaints. In April 2004, Claimant underwent a distal clavicle excision and bursectomy on her right shoulder. She was released from care as it related to her shoulder in late July 2004.

27. Although Employer/Surety initially disputed the causal connection between the December 2002 accident and Claimant's low back, right great toe, and shoulder injuries, they ultimately accepted liability and either paid for Claimant's medical care and prescription drugs or reimbursed Claimant for care and medications for which she claimed to have paid.

28. Dr. Carraher declared Claimant at maximum medical improvement for her work-related injuries on October 21, 2005. At the time that Claimant was determined to be medically stable, the following medications were being prescribed:

Medication	Dose	Frequency
Alprazolam (Xanax); for anxiety	1 mg	1 by mouth, 4 times/day
Carisoprodol (Soma); muscle relaxer	350 mg	1 by mouth, 3-4 times/day
Hydrocodone-APAP; breakthrough pain	7.5/500 mg	1 by mouth, every 4 hours
OxyContin; pain	40 mg	3-4 by mouth, 3 times/day

PERMANENT PARTIAL IMPAIRMENT (PPI)

29. Claimant did not receive an impairment rating for her fused right foot at the time she was released from care in 1996. In 2005, Dr. Carraher rated her impairment from the fusion at 4% whole person.

30. According to Drs. Bozarth and Adams, Claimant was given an impairment rating on her low back of 5% by Drs. Stump and Iverson who performed an IME in October 2003. The record of the IME itself is not a part of the record.

31. Dr. Carraher is the only physician who has given Claimant an impairment rating for the shoulder and low back injuries she suffered as a result of the industrial accidents that are the basis of this proceeding. Dr. Carraher rated Claimant's shoulder impairment at 10% whole person, and her back problems at 5% whole person. He gave no rating for the fusion of the right great toe at the MTP joint, and did not give a rating for Claimant's CMT. The combined value of the three ratings is 18%, whole person, with 4% being apportioned to her pre-existing right foot arthrodesis, and 14% apportioned to the 2002 accidents. Dr. Carraher did not impose any

new restrictions on Claimant as a result of her 2002 injuries, nor did any of the specialists who treated her, including Dr. Dunlap, Dr. Lea, and Dr. Kody.

32. Claimant underwent a panel IME on February 18, 2005, and again on April 6, 2006. Panelists included William Bozarth, M.D., a neurologist, and Warren Adams, M.D., an orthopedist. Drs. Bozarth and Adams opined that all of Claimant's medical conditions were the result of her CMT disease, not her December 2002 industrial injuries. For that reason, they awarded no permanent partial impairment for Claimant's December 2002 injuries.

DISABILITY

33. Two vocational experts provided testimony regarding Claimant's disability. Douglas N. Crum, CDMS, testified at hearing on behalf of Employer/Surety. The testimony of Tom L. Moreland was taken post-hearing on behalf of Claimant.

Tom Moreland

34. Mr. Moreland has worked as a vocational and rehabilitation counselor since approximately 1969. He holds an M.A. from the University of Northern Colorado in Rehabilitation Counseling and Special Education. Starting in 1987, Mr. Moreland has been the owner of a vocational consulting firm, Inland Empire Consultants and Vocational Specialists.

35. Mr. Moreland met with Claimant, reviewed medical records, and examined her earnings records. It was Mr. Moreland's opinion that prior to her 2002 industrial accidents, Claimant was a part-time, sedentary worker. Moreland based his opinion on the sedentary restrictions imposed by Dr. Hansen and the part-time restrictions imposed by Dr. Carraher.

36. Mr. Moreland opined that subsequent to her 2002 industrial accidents, Claimant could perform sedentary work, but not for a full eight-hour workday. Moreland based his opinion on the results of a functional capacity evaluation conducted by Mark Bengtson, MPT,

together with input from Dr. Carraher.

37. Mr. Moreland acknowledged that Claimant was receiving Social Security disability benefits from 1997 or 1998 through the date of the hearing, but that she was able to do some work on an occasional basis, and within the earnings limits of her Social Security benefits, in the years before her 2002 accidents.

38. Mr. Moreland opined that after the 2002 accidents, Claimant could not work on any kind of a sustained basis.

Douglas Crum

39. Douglas Crum has worked in the vocational rehabilitation arena since 1987. He holds certification as a disability management specialist. His experience includes approximately seven years with the Industrial Commission Rehabilitation Division, both as a field consultant and as a manager of a regional office, and thirteen years as a rehabilitation consultant in the private sector. Since 1999, Mr. Crum has been self-employed in the field.

40. Mr. Crum reviewed Claimant's medical and tax records, along with documentation related to her Social Security disability claim. He attempted to meet with her, but his request was denied by Claimant's counsel.

41. Mr. Crum opined that prior to her 2002 industrial injuries, Claimant was limited to sedentary work (per Dr. Hansen), and to part-time work only (per Dr. Carraher). In addition, Mr. Crum noted that in 1997, Dr. Carraher told the Social Security administration that Claimant had limited ability to walk, fatigued easily, had difficulty with prolonged use of her upper extremities, and had a twenty-pound lifting restriction. In 2000, Dr. Carraher advised the Idaho disability determinations office that Claimant had problems with grip strength, could not perform repetitive or prolonged work with her upper extremities, was limited in her ability to both stand

and walk, and that she could work as a medical assistant only on a limited basis and with accommodations. In 2001, Dr. Carraher limited Claimant to working one 8- to 12-hour day per week because she was experiencing increased pain when she worked more hours, which required increased use of pain medications. In summary, Mr. Crum opined that prior to her 2002 injuries, Claimant could work only on a quarter-time basis, and this was confirmed by her earnings records in the years leading up to 2002.

42. Mr. Crum further opined that Claimant did not have any new or additional restrictions placed upon her subsequent to her 2002 industrial injuries. Based on her work history, and her pre-existing limitations, Mr. Crum opined that Claimant was totally and permanently disabled prior to October 2002.

DISCUSSION AND FURTHER FINDINGS

DISABILITY

43. The definition of “disability” under the Idaho workers’ compensation law is:

. . . a decrease in wage-earning capacity due to injury or occupational disease, as such capacity is affected by the medical factor of physical impairment, and by pertinent nonmedical factors as provided in section 72-430, Idaho Code.

Idaho Code § 72-102 (10). A permanent disability results:

when the actual or presumed ability to engage in gainful activity is reduced or absent because of permanent impairment and no fundamental or marked change in the future can be reasonably expected.

Idaho Code § 72-423. A rating of permanent disability is an appraisal of the injured employee’s present and probable future ability to engage in gainful activity as it is affected by the medical factor of permanent impairment and by pertinent nonmedical factors. Idaho Code § 72-425. Among the pertinent nonmedical factors are the following: the nature of the physical

disablement; the cumulative effect of multiple injuries; the employee's occupation; the employee's age at the time of the accident; the employee's diminished ability to compete in the labor market within a reasonable geographic area; all the personal and economic circumstances of the employee; and other factors deemed relevant by the commission. Idaho Code § 72-430.

44. The burden of proof is on the claimant to prove disability in excess of impairment. Expert testimony is not required. The test is not whether the claimant is able to work at some employment, but whether a physical impairment, together with non-medical factors, has reduced the claimant's capacity for gainful activity. *Seese v. Ideal of Idaho*, 110 Idaho 32, 714 P.2d. 1 (1986).

45. There are two methods by which a claimant can prove he or she is totally and permanently disabled. A claimant may prove a total and permanent disability by showing that his or her medical impairment together with the nonmedical factors total 100%. When a claimant cannot make the showing required for 100% disability, then a second methodology is available:

The odd-lot category is for those workers who are so injured that they can perform no services other than those that are so limited in quality, dependability or quantity that a reasonably stable market for them does not exist.

Jarvis v. Rexburg Nursing Center, 136 Idaho 579, 584 38 P.3d 617, 622 (2001) citing *Lyons v. Industrial Special Indem. Fund*, 98 Idaho 403, 565 P.2d 1360 (1977). The worker need not be physically unable to perform any work:

They are simply not regularly employable in any well-known branch of the labor market absent a business boom, the sympathy of a particular employer or friends, temporary good luck, or a superhuman effort on their part.

Id., 136 Idaho at 584, 38 P.3d at 622.

46. There is no dispute that at the time of hearing, Claimant was totally and permanently disabled. The central issue in this proceeding is not *whether* Claimant is totally and permanently disabled, but rather, *when* she became totally and permanently disabled. Employer/Surety and ISIF both assert that Claimant was an odd-lot worker and totally and permanently disabled *before* her 2002 industrial injuries. Claimant contends that she only became totally and permanently disabled *following* her 2002 industrial injuries.

47. The Referee finds that Claimant was an odd-lot worker and totally and permanently disabled prior to her 2002 industrial injuries. Claimant has failed to establish that her limitations and restrictions after her 2002 accident were substantively more onerous than her limitations and restrictions before her 2002 accident.

48. Despite the difficulties that her CMT and triple arthrodesis posed, Claimant was able to find some work in her field in the subsequent years because she wanted to work, was dogged in her efforts, had excellent skills to offer, had the good luck to find start-up medical practices or temporary fill-in work, and just possibly, because some employers were willing to make accommodations in order to have the benefit of her skills. Did that make them "sympathetic employers"? Possibly. But being a sympathetic employer does not mean that the employee is pathetic or in need of charity, merely that the employer is willing to make accommodations that are out of the ordinary in order to obtain an employee's beneficial services. Those who hired Claimant certainly got the benefit of their bargain. But, as evidenced by her *employment history* in the years leading up to her work for Employer, the services she could offer an employer were so limited that even the most well-disposed employers had few positions that were suitable. Claimant is the odd-lot worker personified.

Work Was Sedentary

49. Claimant was permanently limited to sedentary work following her triple arthrodesis. Claimant's own vocational expert, Tom Moreland, testified that the job of medical assistant was a light to sedentary position. As described by Claimant and Dr. Carraher, the job required Claimant to be on her feet and walking around the office much of the time she was working—more consistent with light work than sedentary work. As early as 2000, Dr. Carraher opined that Claimant could perform the duties of a medical assistant *only* with limited hours and substantial accommodation. The accommodation provided by Dr. Carraher was that Claimant had sufficient time between patients to sit at a desk and work on charts, and that she could rest when she needed to. Following her 2002 injury, Claimant continued to be limited to sedentary work.

Work Was Less Than Part-Time

50. Claimant never returned to full-time work after Dr. Hansen released her from care in 1996. While Dr. Hansen expected Claimant to return to full-time work, and Dr. Carraher initially anticipated that Claimant would be able to return to something approaching full-time work for him, Claimant was unable to do so. She was working twenty or fewer hours per week when, in November 2001, Dr. Carraher reduced her maximum hours of work per week from twenty to twelve. Following her 2002 injury, Claimant remained subject to the twelve hour per week limitation.

Other Restrictions

51. As early as 1997, Dr. Carraher told the Social Security administration that Claimant had limited ability to walk, fatigued easily, had difficulty with prolonged use of her upper extremities, and had a twenty-pound lifting restriction. In 2000, Dr. Carraher advised the

Idaho disability determinations office that Claimant had problems with grip strength, could not perform repetitive or prolonged work with her upper extremities, was limited in her ability to both stand and walk, and that she could work as a medical assistant only on a limited basis and with accommodations. No additional substantive restrictions or limitations were imposed following her 2002 accident.

Medications

52. In the weeks and months immediately preceding her 2002 accident, Claimant was given prescriptions as listed in finding of fact 18, *infra*. Subsequent to her 2002 injury, Claimant was given prescriptions as listed in finding of fact 28, *infra*. With the exception of the frequency of use of Xanax, the prescriptions are for identical amounts, dosages, and frequency. Claimant testified that while she was taking the same medications before and after December 2002, she was not taking them in the same amounts. The Referee finds the actual prescription records to be the most reliable indicator of Claimant's prescription drug consumption.² As to Claimant's increased use of Xanax, nothing in the record relates the increased usage to her industrial injuries.

53. Fundamentally, Claimant's work limitations were the same both before and after her 2002 injuries. Even her own vocational expert could not identify any factors that substantively distinguish her condition before and after the 2002 accident. If Claimant was

² Although the issue of continuing medical care was not a stated issue before the Commission at hearing, in light of the requirements of Idaho Code § 72-432, the Referee notes that Employer/Surety's obligation to provide the prescription medications (or their equivalents) identified in findings of fact 18 and 28, ceased on and after October 21, 2005, when Claimant was declared medically stable. Claimant was taking these medications prior to her 2002 accident primarily for her CMT, and she has now returned to her pre-injury condition *vis a vis* her work injuries. Claimant's CMT is progressive, and undoubtedly her condition is worse now than at the time of her 2002 injuries, however, Employer/Surety has no obligation to pay for medication related to her CMT.

totally and permanently disabled at the time of hearing, then she was totally and permanently disabled before her 2002 accident.

ATTORNEY FEES

54. Attorney fees are not granted to a claimant as a matter of right under the Idaho Workers' Compensation Law, but may be recovered only under the circumstances set forth in Idaho Code § 72-804, which provides:

Attorney's fees - Punitive costs--in certain cases. - If the commission or any court before whom any proceedings are brought under this law determines that the employer or his surety contested a claim for compensation made by an injured employee or dependent of a deceased employee without reasonable ground, or that an employer or his surety neglected or refused within a reasonable time after receipt of a written claim for compensation to pay to the injured employee or his dependents the compensation provided by law, or without reasonable grounds discontinued payment of compensation as provided by law justly due and owing to the employee or his dependents, the employer shall pay reasonable attorney fees in addition to the compensation provided by this law. In all such cases the fees of attorneys employed by injured employees or their dependents shall be fixed by the commission.

The decision that grounds exist for awarding a claimant attorney's fees is a factual determination that rests with the commission. *Troutner v. Traffic Control Company*, 97 Idaho 525, 528, 547 P.2d 1130, 1133 (1976).

55. The record demonstrates that Employer/Surety paid or provided reimbursement for all of Claimant's medical care associated with her injuries, including substantial prescription costs for which they may not have been liable. Given the complexities of sorting out the causation of Claimant's various complaints, Employer/Surety's payments were not unreasonably delayed or discontinued. The Referee finds no basis to award attorney fees to Claimant in this proceeding.

REMAINING ISSUES

56. In light of the finding that Claimant was totally and permanently disabled as an odd-lot worker prior to the accident that gave rise to this proceeding, all other issues are moot.

CONCLUSIONS OF LAW

1. Claimant was totally and permanently disabled under the odd lot doctrine prior to her December 2002 industrial accidents.
2. Employer/Surety is not obligated to continue to pay for Claimant's OxyContin, Hydrocodone, Soma, and Xanax or their generic equivalents after October 21, 2005.
3. Claimant is not entitled to attorney fees.
4. All other issues are moot.

RECOMMENDATION

The Referee recommends that the Commission adopt the foregoing findings of fact and conclusions of law and issue an appropriate final order.

DATED this 5 day of November, 2007.

INDUSTRIAL COMMISSION

Rinda Just
Rinda Just, Referee

ATTEST:

Dana Post
Assistant Commission Secretary



CERTIFICATE OF SERVICE

I hereby certify that on the 20 day of November, 2007 a true and correct copy of **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon:

MICHAEL J VERBILLIS
PO BOX 519
COEUR D'ALENE ID 83816-0519

PAUL J AUGUSTINE
PO BOX 1521
BOISE ID 83701

THOMAS W CALLERY
PO BOX 854
LEWISTON ID 83501-0854

djb

Donna Bostand

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BETTY S. CHRISTENSEN,)
)
 Claimant,)
)
 v.)
)
 S. L. START & ASSOCIATES, INC.,)
)
 Employer,)
)
 and)
)
 STATE INSURANCE FUND,)
)
 Surety,)
)
 and)
)
 STATE OF IDAHO, INDUSTRIAL)
 SPECIAL INDEMNITY FUND,)
)
 Defendants.)
 _____)

**IC 2002-525919
2003-004986**

ORDER

**FILED
NOV 20 2007**

INDUSTRIAL COMMISSION

Pursuant to Idaho Code § 72-717, Referee Rinda Just submitted the record in the above-entitled matter, together with her proposed findings of fact and conclusions of law, to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendation of the Referee. The Commission specifically notes that the parties presented evidence, argued and briefed a dispute over continuing medication taken by Claimant. Although not specified as an issue for resolution, the parties certainly treated the matter as a dispute. Even though the Referee's comments on this subject are technically dicta, the Commission finds merit in the advisory nature of such recommendation. The Commission concurs with this recommendation. Therefore, the

ORDER - 1

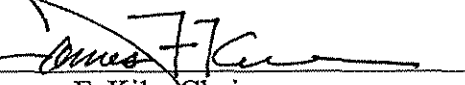
Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

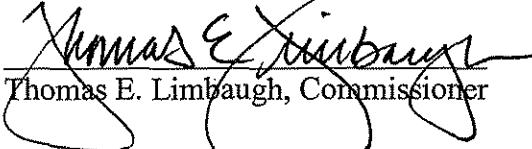
1. Claimant was totally and permanently disabled under the odd lot doctrine prior to her December 2002 industrial accidents.
2. Claimant is not entitled to attorney fees.
3. All other issues are moot.
4. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 20 day of November, 2007.


INDUSTRIAL COMMISSION


James F. Kile, Chairman

R.D. Maynard, Commissioner


Thomas E. Limbaugh, Commissioner

ATTEST:


Assistant Commission Secretary



CERTIFICATE OF SERVICE

I hereby certify that on the 20 day of November, 2007, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following persons:

MICHAEL J VERBILLIS
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PAUL J AUGUSTINE
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BOISE ID 83701

THOMAS W CALLERY
PO BOX 854
LEWISTON ID 83501-0854

djb

Donna Bostard

12/10/2007 11:54 12086641102

MICHEALJVERBILLIS

PAGE 03

CERTIFICATE OF SERVICE

I hereby certify that on the 10 day of Dec, 2007, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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- OVERNIGHT MAIL
- TELECOPY (FACSIMILE)


MICHAEL J. VERBILLIS

12/10/2007 11:54 12086541161

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PAGE 04

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 Idaho State Bar No. 1392
 Attorney for Claimant

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BETTY S. CHRISTENSEN,
 Claimant,
 vs.
 S. L. START & ASSOCIATES, INC.,
 Employer,
 and
 STATE INSURANCE FUND,
 Surety, and
 STATE OF IDAHO INDUSTRIAL SPECIAL
 INDEMNITY FUND,
 Defendants.

I.C. NO. 02-525919 & 03-004986

**MEMORANDUM IN SUPPORT OF
MOTION FOR RECONSIDERATION
AND/OR REHEARING**

INDUSTRIAL COMMISSION

FILED
DEC 10 2007

The Claimant has found herself in a glass ceiling environment. She is found to be totally disabled before she went back to work. The undersigned does not believe the Commissioner made such a finding lightly and without consideration of the considerable perseverance displayed by Claimant in picking herself up by her boot laces each time she stumbled along the way.

The problem with the decision in this case, however, is not the application of the *Hamilton Doctrine* by the Hearing Officer (although the Undersigned continues to adhere to the view that *Hamilton* was wrongly decided and/or its application to the case at bar was improvident), rather Claimant seeks clarification from the Commission concerning the impairment that was assessed to her by her treating physician who knew her both before and after the industrial accident of 2002.

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MICHAEL J. VERBILKIS

PAGE 05

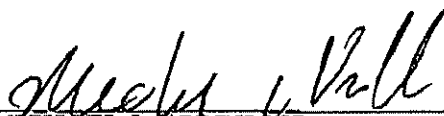
As the Referee recited on page 11 of the Findings of Fact, Conclusions of Law and Recommendation, Dr. Carraher is the only physician that gave Claimant an impairment rating for the shoulder and low back injuries that were the subject of this hearing. Although the Referee mentions the panel of February 18, 2005, in passing, no finding is made as to whether or not the Claimant is entitled to impairment by virtue of Dr. Carraher's rating or whether the Referee has found the opinions of the hired experts to be more persuasive.

The Undersigned is aware of no case law or workers' compensation decision that holds that it is unlawful or improper to award impairment to a person who has been determined a retro-active total, as it were. Thus, it is the opinion of the Undersigned that Claimant is entitled to the 18% whole man impairment rendered by Dr. Carraher at the very minimum. Of course, the Referee is free to rethink her view of the facts and award total and permanent disability benefits to Claimant based upon the extremely capitated amounts that she would receive based upon her actual work experience. Nothing in *Hamilton* would prevent such a finding.

In conclusion, it is respectfully submitted that the Referee in this case, has not followed the teachings of the Supreme Court and has failed to give liberal construction of the act in favor of the Claimant as is mandated by Idaho Code §72-201. *Haldiman vs. American Fine Foods*, 117 Idaho 955, 793 P.2d. 197 (1990). The Undersigned has written the foregoing, not with the intention of seeking to fan fires or assign blame, but is sincerely hopeful that this Referee will learn that the spirit of the law as well as the letter of the law is what is important in workers' compensation law.

It is unconstitutional and it would be a denial of due process of law for this decision to stand without modification. Ms. Christensen is entitled to her impairment award as is any other person, whether they be deemed an *ex post facto* odd lot worker or not.

DATED this 10 day of Dec, 2007.


MICHAEL J. VERBILKIS
Attorney for Claimant

MEMORANDUM IN SUPPORT OF
MOTION FOR RECONSIDERATION AND/OR REHEARING - 2

12/10/2007 11:54

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MICHEALJVERBILLIS

PAGE 06

CERTIFICATE OF SERVICE

I hereby certify that on the 10 day of Dec, 2007, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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- U.S. MAIL, Postage Prepaid
- HAND DELIVERED
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 Idaho State Bar No.

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BETTY S. CHRISTENSEN,)
)
 Claimant,)
)
 vs.)
)
 S.L. START & ASSOCIATES, INC.,)
)
 Employer,)
)
 STATE INSURANCE FUND,)
)
 Surety,)
)
 STATE OF IDAHO INDUSTRIAL)
 SPECIAL INDEMNITY FUND,)
)
 Defendant.)
 _____)

Case No.: I.C. NO. 02 – 525919 (12/5/02)
 I.C. NO. 03 – 004986 (12/9/02)

DEFENDANT STATE OF IDAHO
 INDUSTRIAL SPECIAL INDEMNITY
 FUND'S RESPONSE TO MOTION FOR
 RECONSIDERATION AND/OR
 REHEARING

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 INDUSTRIAL COMMISSION
 2007 DEC 26 A 10:08

The claimant in the above-entitled action has filed a motion pursuant to Idaho Code §72-718 for reconsideration of the decision entered by the Industrial Commission on November 20, 2007. The motion appears to be in the nature of a request for reconsideration as opposed to a request for a

DEFENDANT STATE OF IDAHO INDUSTRIAL
 SPECIAL INDEMNITY FUND'S RESPONSE
 TO MOTION FOR RECONSIDERATION AND/OR
 HEARING

rehearing. There does not appear to be any basis to go through the hearing process again which involved a lengthy hearing and the review of numerous medical and vocational exhibits. Counsel will treat the motion therefore as a request for reconsideration.

The thrust of the motion and memorandum for reconsideration is apparently directed towards the failure of the Commission to adopt Dr. Carraher's 18% whole person impairment rating. Suffice to say it is apparent from the Findings of Fact entered in this case that Dr. Carraher's 18% rating was duly noted. The Commission, however, adopted the findings of the panel examination done by Drs. Bozarth and Adams which indicated that the Claimant had no permanent physical impairment as a result of the December 2002 injuries. Dr. Friedman, who performed an Independent Medical Evaluation in 2003 reported that the Claimant did not suffer any additional permanent physical impairment as a result of the December 2002 incident. There is ample evidence in the record to support the Commission finding of no physical impairment.

With regard to the application of the so-called 'Hamilton Doctrine', the evidence in this case and what the Industrial Commission found was that the Claimant's work limitations of part-time sedentary work were the same before and after her 2002 injuries. Simply put, there was no evidence in the record that the 2002 incidents combined with the Claimant's pre-existing impairments to render the Claimant totally disabled.

The Claimant in this case failed to demonstrate the fourth prong of the "Dumaw Test", *Dumaw v J.L. Norton Logging*, 118 Idaho 150 (1990), the "combined with" requirement. Specifically, that the pre-existing impairment must combine with the subsequent injury to cause total and permanent disability. While the evidence in the case indicates that Ms. Christiansen's physical condition may be worse now than it was prior to December 2002, that is based upon the nature of the progressive neuropathy from which she suffers. Ms. Christiansen's own treating physician indicated that it was hard to say how much her injuries contributed to her current condition.

As the decision of the Industrial Commission notes, "*The claimant has failed to establish that her limitations and restrictions after her 2002 accident were substantively more onerous than her limitations and restrictions before her 2002 accident.*" Findings of Fact, Conclusions of Law & Recommendation, ¶ 47, p.16.

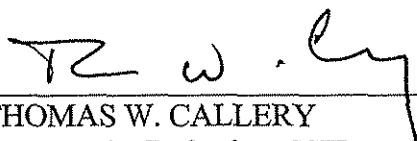
Prior to the 2002 injury, Claimant was limited to part-time sedentary work. The Claimant began receiving Social Security disability in 1996 and never returned to full-time work after her arthrodesis surgery in 1996. The record is replete with references to the Claimant's ability to stand and walk on only a very limited basis prior to 2002. She was restricted by her own family doctor to part-time sedentary work. As the Findings of Fact concluded, the Claimant's work limitations were the same both before and after her 2002 injuries. The Claimant's own vocational expert could not identify any factors that distinguished her condition before and after the 2002 accident. Findings of Fact, Conclusions of Law & Recommendation, ¶ 53, p.18.

The decision in this case should be sustained because the Claimant was totally and permanently disabled prior to her December 2002 industrial accidents. The Findings of Fact entered by the Industrial Commission in this case, and specifically the finding that the Claimant failed to demonstrate the combined-with requirement of Idaho Code §72-332, provides an ample basis for the Commission not to modify its decision.

DATED this 21 day of December, 2007.

JONES, BROWER & CALLERY, P.L.L.C.

By


THOMAS W. CALLERY
Attorney for Defendant, ISIF

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing DEFENDANT STATE OF IDAHO INDUSTRIAL SPECIAL INDEMNITY FUND'S RESPONSE TO MOTION FOR RECONSIDERATION AND/OR HEARING was this 21 day of December, 2006,

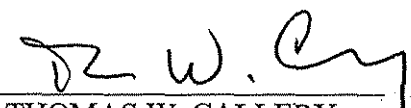
hand-delivered by providing a copy to: Valley Messenger Service;
 hand-delivered;
 mailed, postage pre-paid, by first class mail; or
 transmitted via facsimile

to:

MICHAEL VERBILLIS
ATTORNEY AT LAW
P.O. BOX 519
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ATTORNEY AT LAW
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BOISE ID 83701

By


THOMAS W. CALLERY
Attorney for Defendant, ISIF

DEFENDANT STATE OF IDAHO INDUSTRIAL
SPECIAL INDEMNITY FUND'S RESPONSE
TO MOTION FOR RECONSIDERATION AND/OR
HEARING

PAUL J. AUGUSTINE ISB 4608
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2007 DEC 31 P 2:25
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INDUSTRIAL COMMISSION

Attorneys for Employer/Surety

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BETTY S. CHRISTENSEN,

Claimant,

vs.

S. L. START & ASSOCIATES, INC.,

Employer,

and

STATE INSURANCE FUND,

Surety,

and

IDAHO SPECIAL INDEMNITY FUND,

Defendants.

I.C. NO.: 02-525919 & 03-004986

**EMPLOYER/SURETY'S
OPPOSITION TO CLAIMANT'S
MOTION FOR RECONSIDERATION**

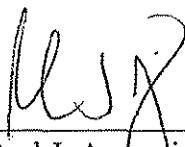
Defendants, SL Start, Inc. (hereinafter "SL Start") and State Insurance Fund, by and through their attorney of record, Paul J. Augustine, of the firm Augustine & McKenzie, PLLC, hereby oppose claimant's Motion for Reconsideration/Rehearing on the grounds below.

There is sufficient evidence to support the Commission's finding that the claimant is not entitled to any impairment as Drs. Bozarth and Adams both opined that the claimant did not suffer any impairment as a result of her accidents. (See ISIF Exhibit 7) Further, since the Commission correctly ruled that the claimant was totally and permanently disabled prior to her employment with SL Start based upon her restrictions and the opinion testimony of both vocational experts, she is not entitled to any impairment. Impairment is a factor in the analysis of a claimant's permanent disability, Idaho Code Sections 72-222 and 225, therefore, since the claimant was already totally and permanently disabled prior to her employment with SL Start, she should not be entitled to any additional impairment. Regardless, the evidence clearly supports a finding that the claimant is not entitled to any additional impairment because her disability was total and permanent due to her pre-existing Charcot Marie Tooth disease and her impairment rated by her physician was related to this disease.

Therefore, the Employer/Surety respectfully request that the Commission deny the claimant's motion.

DATED this 31st day of December 2007.

AUGUSTINE & MCKENZIE, PLLC

By 
Paul J. Augustine - Of the Firm
Attorneys for Employer/Surety

CERTIFICATE OF SERVICE

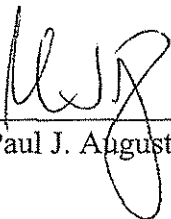
I HEREBY CERTIFY that on the 31st day of December, 2007, I caused to be served a true copy of the foregoing EMPLOYER/SURETY'S OPPOSITION TO CLAIMANT'S MOTION FOR RECONSIDERATION, by the method indicated below, and addressed to each of the following:

Michael Verbillis
111 North 2nd Street, Suite 300
P. O. Box 519
Coeur d'Alene, Idaho 83816-0519
Attorney for Claimant

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Telecopy

THOMAS W. CALLERY
JONES, BROWER & CALLERY, P.L.L.C.
P.O. Box 854
1304 Idaho Street
Lewiston, ID 83501
Attorney for ISIF

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Telecopy



Paul J. Augustine

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BETTY S. CHRISTENSEN,)
)
 Claimant,)
 v.)
)
 S.L. START & ASSOCIATES, INC.,)
)
 Employer,)
)
 and)
)
 STATE INSURANCE FUND,)
)
 Surety,)
)
 and)
)
 STATE OF IDAHO, INDUSTRIAL)
 SPECIAL INDEMNITY FUND,)
)
 Defendants.)

IC 2002-525919
 2003-004986

ORDER ON
 RECONSIDERATION

FILED
 MAR - 3 2008
 INDUSTRIAL COMMISSION

On December 10, 2007, Claimant filed a motion requesting reconsideration and/or hearing on the Industrial Commission's decision filed November 20, 2007, in the above referenced case. Defendant State of Idaho Industrial Special Indemnity Fund filed a response on December 26, 2007. Defendants S.L. Start & Associates and State Insurance Fund filed a response on December 31, 2007. Claimant did not file a reply.

In the motion, Claimant asks for clarification concerning the impairment that was assessed to Claimant by her treating physician. Claimant states that the decision has no finding as to whether Claimant is entitled to the impairment rating given by her treating doctor or

whether the Commission found the opinion of the IME panel finding no impairment more persuasive.

Defendants aver that Claimant is not entitled to impairment because the decision found that Claimant failed to establish that her limitations and restriction after her 2002 accident were substantively more onerous than before the accident. Defendants further argue that since the Commission ruled that Claimant was totally and permanently disabled prior to her 2002 accident based upon her restrictions and the opinion testimony of both vocation experts, she is not entitled to any impairment.

In this case, Claimant was found to be totally and permanently disabled prior to her 2002 accident. The decision made repeated findings that no additional substantive restrictions or limitations were imposed on Claimant following her 2002 accident. Yet, the Commission did not detail its finding of Claimant's PPI entitlement from the 2002 industrial injury. Claimant's entitlement to PPI was a noticed issue and will be addressed with the following Order Amending Decision.

Based on the foregoing, Defendant's Motion for Reconsideration is GRANTED. Accordingly, the relevant portions of the decision are amended below.

ORDER AMENDING DECISION

Based on the decision to grant reconsideration regarding the lack of a finding of Claimant's entitlement to partial permanent impairment from the 2002 accident, the Commission hereby AMENDS the decision in the above-referenced case as follows:

1. Fact 53a stated below is ADDED to the Recommendation on page 19 following paragraph 53.

53a. **Permanent partial impairment.** "Permanent impairment" is any anatomic or

functional abnormality or loss after maximal medical rehabilitation has been achieved and which abnormality or loss, medically, is considered stable or nonprogressive at the time of the evaluation. Idaho Code § 72-422. "Evaluation (rating) of permanent impairment" is a medical appraisal of the nature and extent of the injury or disease as it affects an injured worker's personal efficiency in the activities of daily living, such as self-care, communication, normal living postures, ambulation, elevation, traveling, and nonspecialized activities of bodily members. Idaho Code § 72-424. When determining impairment, the opinions of physicians are advisory only. The Commission is the ultimate evaluator of impairment. *Urry v. Walker Fox Masonry Contractors*, 115 Idaho 750, 755, 769 P.2d 1122, 1127 (1989).

The IME panel, Drs. Bozarth and Adams, opined that all of Claimant's medical conditions were the result of her CMT disease, not her December 2002 industrial injuries. For that reason, the panel awarded no PPI for Claimant's December 2002 industrial injuries. None of Claimant's treating specialists imposed any new restrictions on Claimant as a result of the 2002 injuries. As discussed above, the Commission finds that no substantive restrictions or limitations were imposed following her 2002 accident. The Commission finds the panel IME more persuasive regarding PPI. Claimant may have suffered a change in her ability to perform activities of daily living, but such changes were not due to the 2002 industrial accident.

Therefore, the Commission finds that Claimant is not entitled to PPI for the December 2002 industrial accident.

2. Conclusion 2a stated below is ADDED to the Conclusions of Law on page 20 following Conclusion 2.

2a. Claimant is not entitled to permanent partial impairment for the December 2002 industrial accident.

ORDER ON RECONSIDERATION - 3

3. Conclusion 2a stated below is ADDED to the Order on page 2 following Conclusion 2:
2a. Claimant is not entitled to permanent partial impairment for the December 2002 industrial accident.

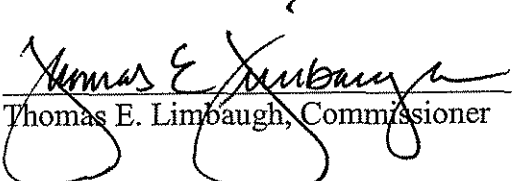
IT IS SO ORDERED.

DATED this 30 day of March, 2008.

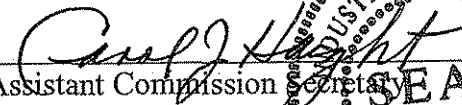
INDUSTRIAL COMMISSION



James F. Kile, Chairman

R.D. Maynard, Commissioner


Thomas E. Limbaugh, Commissioner

ATTEST:


Assistant Commission Secretary

The seal is circular with a double-line border. The outer ring contains the text "INDUSTRIAL COMMISSION" at the top and "STATE OF IDAHO" at the bottom, separated by two stars. The center of the seal features the word "SEAL" in a bold, serif font.

CERTIFICATE OF SERVICE

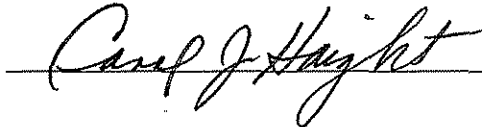
I hereby certify that on 3rd day of March, 2008, a true and correct copy of the foregoing ORDER ON RECONSIDERATION was served by regular United States Mail upon each of the following:

MICHAEL J VERBILLIS
PO BOX 519
COEUR D'ALENE ID 83816-0519

PAUL J AUGUSTINE
PO BOX 1521
BOISE ID 83701

THOMAS W CALLERY
PO BOX 854
LEWISTON ID 83501-0854

ro/cjh

A handwritten signature in cursive script, reading "Carol J. Haight", is written over a horizontal line.

applicable statutes regarding impairment, and for the failure of the Industrial Commission to find disability and properly apply the law.

4. There has been no order entered sealing all or any portion of the record.

5. A reporter's transcript is requested.

6. The Appellant requests the following documents to be included in the agency's record in addition to those automatically included under Rule 28, I.A.R.: e.g.

a. none.

7. I certify:


a. that a copy of this notice of appeal has been served on the reporter;

b. that the administrative agency has been paid the estimated fee for preparation of the reporter's transcript; and

c. service has been made on all parties required to be served pursuant to Rule

20.

DATED this 27 day of March, 2008.



MICHAEL J. VERBILLIS
Attorney for Claimant

CERTIFICATE OF SERVICE

I certify that on the 27 day of March, 2008, a true and correct copy of the foregoing was sent via facsimile transmission to:

PAUL J. AUGUSTINE
Attorney at Law
2627 W. Idaho Street
PO Box 1521
Boise, ID 83701

Thomas W. Callery
JONES, BROWER & CALLERY
P.O. Box 854
Lewiston, ID 83501

Julie McCaughan
M&M Court Reporting
816 E. Sherman Ave., Suite 7
Coeur d'Alene, ID 83814



MICHAEL J. VERBILLIS

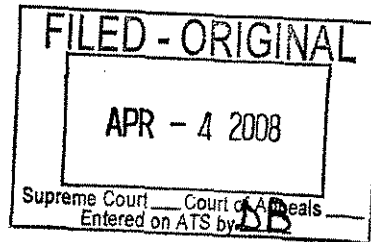
RECEIVED
IDaho SUPREME COURT
COURT OF APPEALS

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

2008 APR -4 AM 9:01

BETTY S. CHRISTENSEN,)
)
 Claimant/Appellant,)
)
 v.)
)
 S.L. START & ASSOCIATES, INC.,)
 Employer, and STATE INSURANCE)
 FUND, Surety,)
)
 and)
)
 STATE OF IDAHO, INDUSTRIAL)
 SPECIAL INDEMNITY FUND,)
)
 Defendants/Respondents.)
 _____)

SUPREME COURT NO. 35169
CERTIFICATE OF APPEAL



Appeal From: Industrial Commission,
James F. Kile, Chairman presiding

Case Number: IC 2002-525919, 2003-004986

Order Appealed from: Findings of Fact, Conclusions of Law, and
Recommendation, filed November 20, 2007, and Order,
filed November 20, 2007, and Order on
Reconsideration, filed March 3, 2008.

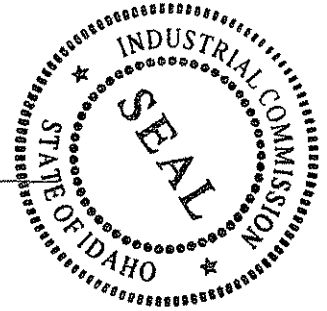
Attorney for Appellant: Michael J. Verbillis
P.O. Box 519
Coeur d'Alene, ID 83816-0519

Attorneys for Respondents: Paul J. Augustine
P.O. Box 1521
Boise, ID 83701

Thomas W. Callery
P.O. Box 854
Lewiston, ID 83501-0854

Appealed By: Claimant/Appellant
Appealed Against: Defendants/Respondents
Notice of Appeal Filed: March 31, 2008
Appellate Fee Paid: \$86.00
Name of Reporter: Julie McCaughan, C.S.R.
M&M Court Reporting
816 E. Sherman Ave., Suite 7
Coeur d'Alene, ID 83814
Transcript Requested: Standard transcript has been requested. Transcript has
been prepared and filed with the Commission.
Dated: April 3, 2008

Dana Bostard
Assistant Commission Secretary

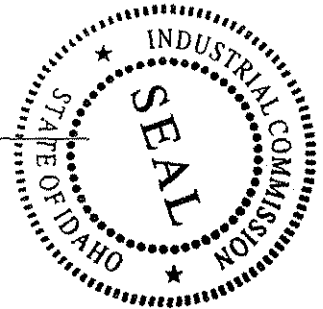


CERTIFICATION

I, Donna Bostard, the undersigned Assistant Commission Secretary of the Industrial Commission of the State of Idaho, hereby CERTIFY that the foregoing is a true and correct photocopy of the Notice of Appeal; Findings of Fact, Conclusions of Law, and Recommendation; and Order; and Order on Reconsideration, and the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Commission on this 3 day of April, 2008.

Donna Bostard
Donna Bostard
Assistant Commission Secretary



THOMAS W. CALLERY
 JONES, BROWER & CALLERY, P.L.L.C.
 Attorneys at Law
 Post Office Box 854
 1104 Idaho Street
 Lewiston, ID 83501
 208/743-3591
 Idaho State Bar No. 2292

2008 APR - 7 11 A 11:05
 RECEIVED
 INDUSTRIAL COMMISSION

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BETTY S. CHRISTENSEN,)	
)	
Claimant,)	
)	Case No.: I.C. NO. 02 – 525919 (12/5/02)
vs.)	I.C. NO. 03 – 004986 (12/9/02)
)	
S.L. START & ASSOCIATES, INC.,)	
)	
Employer,)	
)	
STATE INSURANCE FUND,)	
)	REQUEST FOR ADDITIONAL
Surety,)	TRANSCRIPT AND RECORD
)	
STATE OF IDAHO INDUSTRIAL)	
SPECIAL INDEMNITY FUND,)	
)	
Defendant.)	
_____)	

TO: THE ABOVE NAMED APPELLANT, AND TO MICHAEL J. VERBILLIS, her attorney of record, RESPONDENT, STATE INSURANCE FUND, AND ITS ATTORNEY, PAUL AUGUSTINE, AND THE CLERK OF THE IDAHO INDUSTRIAL COMMISSION

NOTICE IS HEREBY GIVEN, that the above-named Respondent, STATE OF IDAHO

REQUEST FOR ADDITIONAL
 TRANSCRIPT & RECORD

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing *REQUEST FOR ADDITIONAL TRANSCRIPT AND RECORD* was this 4 day of April, 2008,

hand-delivered by providing a copy to: Valley Messenger Service;
 hand-delivered;
 mailed, postage pre-paid, by first class mail; or
 transmitted via facsimile

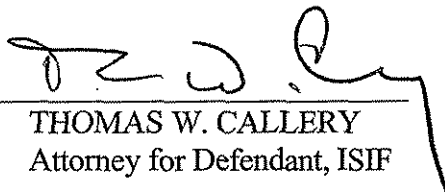
to:

MICHAEL VERBILLIS
ATTORNEY AT LAW
P.O. BOX 519
COEUR D'ALENE, ID 83816 - 9519

PAUL J. AUGUSTINE
ATTORNEY AT LAW
PO BOX 1521
BOISE ID 83701

STATE OF IDAHO
Office of Attorney General
700 W. State Street
P. O. Box 83720
Boise, ID 83720-0010

IDAHO INDUSTRIAL COMMISSION
Judicial Division
317 Main Street
Boise ID 83720-6000

By 
THOMAS W. CALLERY
Attorney for Defendant, ISIF

REQUEST FOR ADDITIONAL
TRANSCRIPT & RECORD

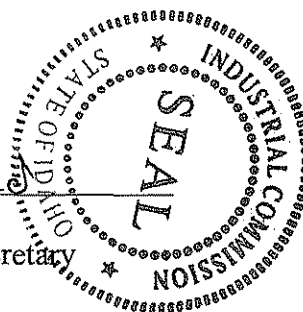
CERTIFICATION OF RECORD

I, Donna Bostard, the undersigned Assistant Commission Secretary of the Industrial Commission, do hereby certify that the foregoing record contains true and correct copies of all pleadings, documents, and papers designated to be included in the Agency's Record Supreme Court Docket No. 35169 on appeal by Rule 28(3) of the Idaho Appellate Rules and by the Notice of Appeal, pursuant to the provisions of Rule 28(b).

I further certify that all exhibits offered or admitted in this proceeding, if any, are correctly listed in the Certificate of Exhibits (i). Said exhibits will be lodged with the Supreme Court upon settlement of the Reporter's Transcript and Agency's Record herein.

DATED this 29 day of April, 2008.

Donna Bostard
Donna Bostard
Assistant Commission Secretary



BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

BETTY S. CHRISTENSEN,)
)
 Claimant/Appellant,)
)
 v.)
)
 S.L. START & ASSOCIATES, INC.,)
 Employer, and STATE INSURANCE)
 FUND, Surety,)
)
 and)
)
 STATE OF IDAHO, INDUSTRIAL)
 SPECIAL INDEMNITY FUND,)
)
 Defendants/Respondents.)
)

SUPREME COURT NO. 35169
NOTICE OF COMPLETION

TO: STEPHEN W. KENYON, Clerk of the Courts; and
Michael J. Verbillis, for the Claimant/Appellant; and
Paul J. Augustine, for the Defendant(s) Employer & Surety/Respondents; and
Thomas W. Callery, for the Defendant State of Idaho, Industrial Special Indemnity
Fund/Respondent.

YOU ARE HEREBY NOTIFIED that the Agency's Record was completed on this date, and,
pursuant to Rule 24(a) and Rule 27(a), Idaho Appellate Rules, copies of the same have been served
by regular U.S. mail upon each of the following:

MICHAEL J VERBILLIS
PO BOX 519
COEUR D'ALENE ID 83816-0519

PAUL J AUGUSTINE
PO BOX 1521
BOISE ID 83701

THOMAS W CALLERY
PO BOX 854
LEWISTON ID 83501-0854

YOU ARE FURTHER NOTIFIED that, pursuant to Rule 29(a), Idaho Appellate Rules, all parties have twenty-eight days from this date in which to file objections to the Agency's Record, including requests for corrections, additions or deletions. In the event no objections to the Agency's Record are filed within the twenty-eight day period, the Reporter's Transcript and Agency's Record shall be deemed settled.

DATED this 29 day of April, 2008.

Donna Bostard
Donna Bostard
Assistant Commission Secretary

